

# **The Shoshone-Bannock Tribes**

## **Surface Water Quality Standards**

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**Commented [ME1]:** Add MZ provision to this section if desired. See below.

APPENDIX 1 NUMERIC CRITERIA FOR TOXIC SUBSTANCES

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Table 2. Factors for Calculating Hardness Dependent Metals Criteria

**Commented [ME2]:** Recommend removing this section; see below

## **PART I. GENERAL PROVISIONS**

### **1.1 Title, Authority and Purpose**

a) These regulations are to be known and cited as the Shoshone-Bannock Tribes Surface Water Quality Standards. They are promulgated pursuant to Section 502 of the Shoshone-Bannock Tribes' Water Quality Protection Act (WQPA) in order to control and prevent water pollution on the Fort Hall Reservation (FHR), preserve existing surface water quality, serve as cleanup standards, and implement the requirements of the federal Clean Water Act, 33 U.S.C. §§ 1251-1387 (CWA or Clean Water Act).

b) Pursuant to WQPA § 402, the Tribal Water Resources Department, through its Water Quality Program, is the agency authorized to regulate water quality on all lands under the jurisdiction of the Shoshone-Bannock Tribes (SBT or Tribes) and to promulgate and administer these standards.

c) It is the policy of the Fort Hall Business Council (FHBC) of the Shoshone-Bannock Tribes to preserve, protect, and enhance the water quality of the Fort Hall Reservation (FHR), for current and future generations, in order to protect the health, safety, economic security, political integrity, cultural and ceremonial practices and beliefs, and the environment of the Shoshone-Bannock Tribes and all residents of the Reservation. Water is an essential resource to the Shoshone-Bannock Tribes that must be protected from harmful levels of pollution. Improving water quality and protecting water resources are Reservation-wide concerns and matters of public interest.

d) The purposes of these surface water quality standards are to: restore, maintain and protect the chemical, physical, and biological quality of Tribal Surface Waters; preserve SBT cultural, ceremonial, and religious uses and the spiritual integrity of those Surface Waters; and promote the health, social welfare, and economic well-being of the Shoshone-Bannock Tribes, its people, and all residents of the FHR, thereby safeguarding the Tribes' political integrity. These standards are designed to help achieve a level of water quality that provides for: all cultural and ceremonial uses of the water; the protection and propagation of fish and wildlife; recreation in and on the water; [public/domestic water supply](#); all existing and designated uses of the water; protection of threatened and endangered species; and promotion of a holistic watershed approach to management of all waters within the Reservation.

e) To carry out these purposes, these standards:

1. Designate the ~~existing~~ uses which define goals for the protection and restoration of Tribal Surface Waters;
2. Prescribe water quality criteria to sustain those designated uses; and
3. Assure that degradation of Tribal Surface Waters shall be prevented or minimized, and that economic growth shall occur consistent with preserving the SBT's existing clean water resources.

f) An additional purpose of these standards is to attain at least the minimum level of water quality described by the most recently updated EPA water quality standards regulations codified in 40 CFR Parts 131 and 132, and to achieve higher levels of water quality protection where needed to support the designated waterbody uses described in these standards.

## 1.2. Applicability

These Surface Water Quality Standards apply to surface waters on all lands under the jurisdiction of the Shoshone-Bannock Tribes, which include all lands within the Reservation, as that term is defined herein, and to all persons and activities within the Reservation. These standards will become applicable and effective for purposes of the Clean Water Act if and to the extent they are approved by EPA pursuant to CWA § 303(c), 33 U.S.C. § 1313(c).

## 1.3. Definitions

For the purpose of these standards, the following definitions apply unless another meaning is clearly indicated by context.

a) “Acute Criteria” means, ~~unless otherwise specified in these standards, the maximum instantaneous or~~ one (1)-hour average concentration of a toxic substance or effluent that ensures adequate protection of sensitive species of aquatic organisms from acute toxicity resulting from exposure to the toxic substance or effluent. Acute criteria will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms “acute criteria” and “criterion maximum concentration” (CMC) are equivalent.

b) “Acute Toxicity” means the existence of mortality or injury to aquatic organisms resulting from a single or short-term (i.e., ninety-six (96) hours or less) exposure to a substance. As applied to toxicity tests, acute toxicity refers to the response of aquatic test organisms to a concentration of a toxic substance or effluent which results in a lethal concentration of a chemical that will kill 50 percent of the sample population under scrutiny, or “LC-50”.

c) “Aquatic species” means any plant or animal that lives at least part of its life cycle in water.

d) “Best management practices” or “BMP” means physical, structural, and/or managerial practices that, when used singularly or in combination, prevent or reduce pollution.

e) “Bioaccumulation” means the process by which a compound is taken up by and accumulates in an aquatic organism, through water, food, and sediments.

f) “Chronic Criteria” means, unless otherwise specified in these standards, the four (4)-day average concentration of a toxic substance or effluent that ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity resulting from exposure to the toxic substance or effluent. Chronic criteria will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms “chronic criteria” and “criterion continuous concentration” (CCC) are equivalent.

**Commented [ME3]:** The duration (averaging period) for acute criteria is generally 1 hour, with a few exceptions (pesticides identified with footnote A in the aquatic life criteria, Table 1; selenium). The exceptions would be covered by this statement, “unless otherwise specified...” The following deletion is recommended to clearly identify the prevalent duration interval that applies to the criteria.

g) “Chronic toxicity” means a fairly long-term adverse effect to an organism as compared to the life span of the organism and caused by or related to changes in feeding, growth, metabolism, reproduction, genetic mutation, or other adverse long-term effect. Short-term test methods for detecting chronic toxicity may be used.

h) “Clean Water Act” or “CWA” means the federal Clean Water Act, 33 U.S.C. §§ 1251-1387, as amended.

i) “Commission” means the Tribal Water Resources Commission, which has the authority pursuant to WQPA § 601 to approve these Surface Water Quality Standards.

j) “Compliance schedule” means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an effluent limitation or other limitation, prohibition or standard.

k) “Deleterious Material” means any nontoxic substance that may cause the tainting of an edible organism, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial species.

l) “Department” means the Tribal Water Resources Department.

m) “Designated use” means a use defined in these standards as a target for each waterbody or waterbody segment, whether or not that use is currently being met.

n) “Ephemeral Water” means a water body that flows temporarily in direct response to precipitation or snowmelt and with a channel that is always above the water table.

o) “EPA” means the United States Environmental Protection Agency.

p) “Existing uses” means all uses actually attained in a water body on or after November 28, 1975, whether or not they are explicitly stated as designated uses in these standards or currently exist.

q) “Fort Hall Business Council” means the governing body of the Shoshone-Bannock Tribes.

r) “FHR” means the Fort Hall Reservation.

s) “Geometric mean” means either the  $n$ th root of a product of  $n$  factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

t) “Hardness” means a measure of the calcium and magnesium salts present in water. For the purposes of these standards, hardness is measured in milligrams per liter and expressed as calcium carbonate ( $\text{CaCO}_3$ ).

u) “Harmonic mean flow” means the number of daily flow measurements divided by the sum of the reciprocals of the flows.

v) “mg/L” means milligrams per liter.

w) “Natural Conditions” means surface water quality that would be present without human-caused pollution. When assessing natural conditions in the headwaters of a disturbed watershed it may be necessary to use an undisturbed neighboring or similar watershed as a reference condition.

x) “Non-point source” means pollution that enters any surface waters from any dispersed land-based or water-based activities, including but not limited to: atmospheric deposition; surface water runoff from agricultural lands, urban areas or forest lands; subsurface or underground sources; or discharges from other vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

y) “NPDES” means National Pollutant Discharge Elimination System, the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA § 307, 318, 402, and 405 of the CWA.

z) “NTU” means nephelometric turbidity unit, which is a unit of turbidity based on a standard method using formazin polymer or its equivalent as the standard reference suspension. NTUs are numerically identical to formazin turbidity units.

aa) “Permit” means a document issued pursuant to Tribal code or federal laws (such as CWA §§ 401, 402 and 404) specifying waste treatment and control requirements or discharge conditions.

bb) “Person” means any individual or group or combination thereof acting as a unit, however associated; any organization of any kind, whether organized for profit or not, and regardless of the form in which it does business, whether as a sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, government (federal, tribal, state, or local), or otherwise, and including any part, subdivision, or agency of any of the foregoing; and any combination of individuals or organizations in whatever form, and the plural as well as the singular number.

cc) “pH” means the negative logarithm of the hydrogen ion concentration.

dd) “Point source” means any discernible, confined or discrete conveyance, including, but not limited to, any pipe, ditch, channel, sewer, tunnel, conduit, well, discrete fissure, container, confined animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged.

ee) “Pollutant” includes, but is not limited to, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq.), heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil and product chemicals, and industrial, municipal, and agricultural waste discharged into water.

**Commented [FE4]:** Recommend deleting “in the headwaters” so this approach can be used for other degraded waters as well. Also recommend specifying that reference site will be undisturbed, and stressing “similar” over neighboring (because neighboring may not be appropriate unless neighboring is also similar).

ff) “Pollutant Minimization Program” means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.

gg) “Pollution” includes, but is not limited to, such contamination, or other alteration of the physical, chemical or biological properties, of any surface waters, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any surface waters that will or is likely to create a nuisance or impair any designated use of such waters.

hh) “Program” means the Water Quality Program within the Tribal Water Resources Department.

ii) “Reservation” means all lands within the exterior boundaries of the Fort Hall Reservation, as set forth in the Fort Bridger Treaty, including individual Tribal member-owned lands and non-member owned fee lands within the exterior boundaries of the Fort Hall Reservation and notwithstanding the issuance of any patent, easement, or rights-of-way running through the Reservation; ceded lands; and such other lands outside the Fort Hall Reservation boundaries as may be added by purchase, exchange, transfer, gift or grant, or which are otherwise under the jurisdiction of the Tribes, for example by virtue of being tribal trust land or allotted land.

jj) “Site-specific criteria” means criteria applicable to a specific site or water body that differ from ~~national the Tribes’ reservation-wide~~ criteria due to site-specific conditions. ~~for example, if naturally occurring concentrations of a pollutant exceed the national criteria for a designated use.~~

kk) “Storm water” means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a storm water drainage system into a defined surface water body, or a constructed infiltration facility.

ll) “Surface Water” means all natural and man-made surface waters and associated ecosystems, including, but not limited to, all perennial and intermittent streams, rivers, creeks, seeps, springs, canals, reservoirs and wetlands, and tributaries of such surface waters. Man-made water bodies used solely for treating, transporting, or impounding pollutants as part of a waste treatment system shall not be considered surface water.

mm) “Temperature” means water temperature expressed in degrees Celsius (° C).

nn) “Toxic Substance” or “Toxic Pollutant” means any substance, material or disease-causing agent, or a combination thereof, which after discharge to surface waters and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the Clean Water Act.

oo) “Toxicity” means acute or chronic toxicity.

**Commented [FE5]:** Does this refer to the Tribe’s otherwise applicable criteria (in which case we suggest something like “reservation-wide criteria”) or to EPA’s 304a criteria? Suggest the former would be more appropriate unless the Tribe is intending to always use EPA’s 304a for their general criteria. Could also just revise to say “...means criteria applicable to a specific site or water body that reflect site-specific conditions.” We also recommend deleting the example as it is not necessary and it is similarly unclear there what “national criteria” are referring to.

**Commented [ME6]:** Is this addition acceptable for clarity? It brings in the term “waste treatment system” from the definition of “Waters of the U.S.” at 40 CFR 230.2: “(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States.”

pp) “Toxicity test” means a test using selected organisms to determine the acute or chronic effects of a chemical pollutant or whole effluent.

qq) “Tribal Surface Waters” means all surface waters located within ~~or bordering upon~~ the Reservation boundary.

**Commented [ME7]:** “Waters ... bordering upon the Reservation boundary” could imply adjacent waters outside of the reservation boundary. Recommended edits.

rr) “Tribes” or “SBT” means the Shoshone-Bannock Tribes.

ss) “Turbidity” means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidity meter.

tt) “µg/L” means micrograms per liter.

uu) “Waste” includes sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances that will or may cause pollution or tend to cause pollution of any water body.

vv) “Water body” means any surface water, including any portion thereof.

ww) “Water quality” means the chemical, physical, biological, and cultural and ceremonial characteristics of a water body.

xx) “Water Quality Specialist” means the manager of the Water Quality Program, as provided in WQPA § 401.

yy) “Wetland” means any area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances would support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

zz) “WQPA” means the Shoshone-Bannock Tribes’ Water Quality Protection Act (November 24, 2015), as amended.

#### **1.4 Powers and Responsibilities**

The Water Quality Program, under the direction of the Water Quality Specialist, is authorized to administer these standards in accordance with WQPA §§ 401-402. The day-to-day operations necessitated by these standards include but are not limited to sampling and monitoring water quality and preparing for the mandatory triennial review process in Section 1.5 of these standards, including any interim review of the standards that may be needed. The Water Quality Specialist also is authorized to develop related water quality protection programs, such as but not limited to a CWA § 319 nonpoint source management program, CWA § 401 certification program, and a groundwater quality program, in consultation with the Tribal Water Engineer, Tribal Water Resources Commission, and Fort Hall Business Council, as appropriate.

#### **1.5 Revisions to Surface Water Quality Standards**

a) The Shoshone-Bannock Tribes Surface Water Quality Standards may be revised on a Reservation-wide basis or water body-specific basis as needed to protect existing and designated



uses or to increase the technical accuracy of the criteria being applied, in accordance with subsection b) of this section.

b) Consistent with CWA § 303(c)(1) and 40 C.F.R. Part 25, the Water Quality Program shall hold **public hearings** at least once every three years to review and, as appropriate, revise these standards. Revisions shall incorporate relevant scientific and engineering advances with respect to water quality. Whenever the SBT revises or adopts a new standard, the Program will issue public notice of proposed changes and provide opportunity for public hearing and comment in accordance with the rulemaking procedures in WQPA Chapter 6. All revisions shall become effective upon approval by the Commission, unless a later date is required by applicable law or is specified in the rule, pursuant to WQPA § 6.1.4. The revised or new standard shall be submitted to EPA for review pursuant to CWA § 303(c)(2) and will be effective under the CWA after EPA approval in order to become federally enforceable.

#### 1.6 Severability

If any provision of these standards or the application of any provision of these standards to any person or circumstance is held to be invalid, the remainder of these standards and the application of such provision to other persons or circumstances shall remain unaffected.

#### 1.7 Water Rights

The water rights of the SBT and the authority of the SBT to allocate quantities of water and administer water rights within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by these standards.

#### 1.8 Collaboration with Federal and State Agencies

The SBT may collaborate with federal and state agencies to prevent, reduce, and eliminate water quality threats and impairments in coordination with programs for managing water resources.

#### 1.9 Dispute Resolution

If a dispute arises between the SBT and a state or another Indian tribe approved by EPA to administer a surface water quality standards program due to differing standards between the two jurisdictions, the SBT will follow the Dispute Resolution Mechanism promulgated by EPA and found at 40 C.F.R. §131.7, as may be revised from time to time.

### PART II. ANTIDEGRADATION POLICY AND IMPLEMENTATION

#### 2.1 Antidegradation Policy

a) Existing water uses and the level of water quality necessary to protect existing water uses shall be maintained and protected.

b) Where existing water quality exceeds levels necessary to support **existing uses, including but not limited to** the protection and propagation of fish, shellfish, and wildlife, cultural/ceremonial uses, and recreation in and on the water, that water body shall be **designated**

**Commented [KK8]:** Recommend deleting this language as it could be misread to imply that all water quality parameters need to exceed levels needed to support existing uses in order to provide Tier 2 protection and also because this protection is typically linked to designated uses, not existing uses

If the tribe wants to expand this protection to non101(a)(2) uses then I would recommend adding those uses into this list.

**Commented [KK9]:** Looks like the tribe is proposing to have high-quality waters as a designated use. For implementation purposes, we recommend that it just be a classification rather than a designated use as it allows greater flexibility to change protection levels when needed

classified as a High-Quality Water. Decisions about whether a water body will be ~~designated~~ classified as a High-Quality Water, and the factors considered when making those decisions, shall allow for full public participation in accordance with 40 C.F.R. § 131.12(a). A water body shall not be excluded from designationclassification as a High-Quality Water the protections solely because water quality does not exceed levels necessary to support all of the uses specified in this section. High-Quality Waters shall be maintained and protected unless the SBT find, after full intergovernmental coordination and public participation, that allowing a lower level of water quality is appropriate to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation of water quality, the SBT shall ensure water quality adequate to protect existing uses fully.

c) The SBT shall mandate the highest statutory and regulatory requirements for all new and existing point sources, and the most cost-effective and reasonable best management practices for control of nonpoint source pollution must be achieved before allowing a lowering of water quality in a high-quality water.

new) Before allowing any lowering of high water quality, the SBT shall find, after an analysis of alternatives, that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located. The analysis of alternatives shall evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity. Practicable in this case means technologically possible, able to be put into practice, and economically viable. When the analysis of alternatives identifies one or more practicable alternatives, the SBT shall only find that a lowering is necessary if one such alternative is selected for implementation.

d) Where High-Quality Waters constitute an exceptional recreational, cultural, or ecological resource of the SBT based on their extraordinary water quality or ecological values, or where special water quality protection is needed to maintain critical habitat areas, the SBT may ~~designate-classify~~ those waters as Outstanding Tribal Resource Waters. Waters meeting one or more of the following criteria shall be considered for Outstanding Tribal Resource Water ~~designationclassification~~:

1. Outstanding national or tribal resource;
2. Areas designated as critical habitat for populations of threatened or endangered species;
3. Waters of exceptional cultural, ceremonial, recreational or ecological significance; and
4. Waters supporting priority species as determined by SBT.

e) The existing water quality of Outstanding Tribal Resource Waters shall be fully maintained and protected and no permanent degradation of such water quality shall be permitted for any reason.

**Commented [ME10]:** The exclusion text is good to include when the waterbody approach is used, rather than the parameter-parameter approach, to avoid a low classification that may not apply to most parameters.

**Commented [KK11]:** Recommend adding in this language as this requirement is tied to the Tier 2 review and is about making sure that the regulatory requirements are achieved before allowing a lowering of water quality

**Commented [ME12]:** Text added for completeness per HQ recommendation

**Commented [KK13]:** This appears to be a designated use, recommend the tribe make this a classification rather than a designated use to make implementation of antideg easier

f) The Water Quality Program may propose to ~~designate-classify~~ water bodies as Outstanding Tribal Resource Waters based on data collected or submitted. In addition, the Commission may nominate water bodies for classification as Outstanding Resource Waters as necessary to protect the water quality parameters that affect the ecological integrity of ~~critical important~~ habitat or special water quality values that are vital to the unique character of those waters. The Water Quality Program shall issue public notice of all proposed ~~designations~~ classifications and provide an opportunity for public comment in accordance with Section 1.5 of these standards. Any final ~~designations-classifications~~ shall be adopted during the next triennial review of these standards, in accordance with Section 1.5.

g) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing methods shall be ~~This antidegradation policy includes protection against water quality impairment associated with thermal discharges and shall be implemented~~ consistent with CWA § 316, 33 U.S.C. § 1326, as amended.

## 2.2 Implementation

a) Antidegradation assessments and analyses required under this Part II shall be conducted on a waterbody basis, with no exceptions based on de minimis impacts.

(new) For all waters, the SBT shall ensure that the level of water quality necessary to protect existing uses is maintained.

1. In order to achieve this requirement, the SBT shall identify existing uses and consider whether a discharge would lower the water quality to the extent that it would no longer be sufficient to protect and maintain the existing uses of that water body. Such consideration shall be based on all existing uses and readily available water quality-related data and information, as well as any additional use and water quality-related data and information submitted during the public comment period for the permit or license.

2. There shall be no lowering of water quality such that the criteria assigned in this chapter to protect designated uses are not met. Where designated uses of the water body are impaired, there shall be no additional lowering of water quality with respect to the pollutant or other parameter that is causing or contributing to the impairment. Where water quality criteria are not met because of natural conditions, human actions are not allowed to further lower the water quality.

b) Activities that will likely result in lowered surface water quality may be permitted as stipulated in this section after a review of: the proposed activity; any appropriate, relevant, and reasonable alternatives; the activity's economic and social development impacts; current or baseline water quality data and studies; and projected impacts on water quality and biota. The burden of providing the analyses and information required by this section shall be on the person or persons proposing the activity under consideration. In evaluating the proposed activity, the review process shall focus on approaches for avoiding, minimizing, and/or mitigating any effects resulting from a lowering of water quality. Any long-term or permanent lowering of water quality

**Commented [ME14]:** Recommend using different terminology than used by the Services for the ESA, to avoid confusion.

**Commented [ME15]:** This statement could be deleted, to allow waters to be reclassified outside of a triennial review process. The statement could also be rephrased as a timeline, e.g., "...adopted no later than the next triennial review..."

**Commented [KK16]:** The original proposed language has a slightly different meaning than the federal reg, recommend including the federal reg language here

**Commented [ME17]:** The added text in this section reflects recommendations from HQ to include these additional implementation methods:

- How Tier 1 protection will be assured
- How public participation will be ensured during a Tier 2 review (these two things could be met by describing how these two things are going to occur)
- How implementation methods will ensure the highest statutory and regulatory requirements for point sources and cost-effective and reasonable BMPs for nonpoint sources before allowing a lowering of water quality
- How Tier 3 protection will be ensured

**Commented [ME18]:** This and the following 2 subparagraphs are copied from the draft CTCR WQS and add Tier 1 protections (protect existing uses, paragraph 2.1(a) above).

is not permitted for Outstanding Tribal Resource Waters; however, short term, temporary degradation (i.e., weeks or months) may occur to repair or construct infrastructure or for similar activities, as long as water quality returns to previous levels after the project is completed.

c) Prospective dischargers or permittees shall demonstrate that any lowering of water quality is necessary to meet the requirements of this section, including a review of alternatives to the proposed discharge and evaluation of water quality, social, and economic impacts.

new) If the lowering of water quality is necessary, and will accommodate important social and economic development goals, the SBT may allow a lowering of water quality as long as one of the alternatives analyzed in (4)(B) of this Section is selected for implementation. If a non-degrading practicable alternative is selected, no lowering of water quality need occur, and the Tribes shall not authorize the lowering. In no event may the decision reached under this section allow water quality to be lowered below the level required to support existing and designated uses.

**Commented [ME19]:** Paragraph recommended to specify that if a practicable alternative is identified, then it needs to be implemented in order to allow a lowering of water quality

d) Data collected to support antidegradation reviews must be collected under an approved Quality Assurance Project Plan. Data collection methods must be reviewable and reported in a format specified by the Water Quality Specialist.

e) The Water Quality Program shall implement these standards, including the antidegradation policy and implementation methods, by establishing and maintaining controls on the introduction of pollutants into Tribal Surface Waters and by pursuing the actions listed below, in coordination with federal, tribal, and state agencies, as appropriate:

1. Review the adequacy of existing data regarding Tribal Surface Waters, including their quality and existing and designated uses, as well as on any activities that may detrimentally impact those waters and uses, and obtain additional data where required;
2. Monitor water quality to assess the effectiveness of pollution controls and to determine whether designated uses are being supported and water quality criteria and standards are being attained;
3. Obtain and assess information from dischargers and other sources on existing water quality and the impact of effluents on receiving waters, including the capability of receiving waters to support designated uses and achieve these surface water quality standards;
4. Advise prospective dischargers of antidegradation and discharge requirements, and coordinate with the appropriate permitting agencies as to the same;
5. Require the highest and best degree of waste treatment practicable, commensurate with protecting and maintaining designated uses and existing water quality;
6. Develop water quality-based effluent limitations and provide comment on technology-based effluent limitations, as appropriate, for inclusion in any permit issued to a discharger pursuant to CWA § 402, as amended;

7. Require that effluent limitations or other appropriate limitations applicable to activities with the potential to discharge into Tribal Surface Waters be included in any permit as a condition for certification by the SBT pursuant to CWA § 401, as amended;

8. Coordinate water pollution control activities with other local, tribal, state, and federal agencies, as appropriate;

9. Develop and pursue inspection programs to ensure that dischargers comply with the requirements of these standards and to support the enforcement of state permits and/or federal permits issued by EPA or the U.S. Army Corps of Engineers;

10. Provide technical assistance to wastewater treatment facility operators, within the limits of available technical and other resources;

11. Publish results of water quality investigations and interpretation of those results;

12. Encourage, in conjunction with other agencies, implementation of best management practices to control nonpoint sources of pollution and so to support designated uses and meet these standards;

13. Examine existing and future SBT policies pertaining to septic systems, wastewater treatment systems, stormwater management, solid waste disposal, and other relevant activities to ensure that those policies are consistent with meeting these standards;

14. Determine whether in-stream flows and water levels are adequate to support existing and designated uses and to meet these standards;

15. Collect information provided by current and prospective dischargers, conduct a review and evaluation of antidegradation analyses and information related to regulated actions that may result in a lowering of water quality, and make recommendations regarding whether or not such actions are consistent with these standards; and

16. Implement specific policies and procedures to protect designated High-Quality Waters and Outstanding Tribal Resource Waters.

new) To implement Section 2.1(c), the SBT shall:

1. Identify point sources and regulated nonpoint sources that discharge to, or otherwise impact, the affected waters;

2. Consider any outstanding noncompliance issues relative to regulatory requirements for point sources or required best management practices for regulated nonpoint sources;

3. Ensure that the regulatory requirements for point sources and required best management practices for regulated nonpoint sources are either being achieved, or shall be

**Commented [ME20]:** Text added per HQ comment to address implementation of “highest statutory and regulatory requirements for all new and existing point sources, and the most cost-effective and reasonable best management practices for control of nonpoint source pollution”. Copied text from CTCR antideg section.

achieved through federal and Tribal regulatory mechanisms, such as consent orders and compliance schedules; and

4. Coordinate with appropriate state, federal, or tribal agencies as necessary to achieve such implementation.

**new**) Section 2.1 mandates public participation in the Tribe's decision to classify a water as a High-Quality Water or Outstanding Tribal Resource Water, or to permit lowering the water quality of a High-Quality Water to accommodate important economic or social development. Public participation procedures will be consistent with 40 CFR part 25 and with Section 1.5(b) of this code. Any data and information relevant to the decision shall be made available at least thirty days before the hearing.

**new**) Antidegradation protections will be addressed in new or reissued general permits authorized, implemented, or administered by the permitting authority either at the time the permitting authority develops and issues the general permit or upon review of an applicant's request to be covered by a general permit. The permitting authority will describe in writing in the permit fact sheet how the general permit is consistent with the antidegradation requirements of this paragraph and the antidegradation policy in paragraph (e) of this section.

**new**) For reservation waters assigned as Outstanding Tribal Resource Waters consistent with paragraph 2.1(f), the Tribe shall ensure, through the application of appropriate controls on point and nonpoint pollutant sources, that water quality is maintained and protected. No new or expanded point source discharges will be allowed to Outstanding Tribal Resource Waters, and no new or expanded point source discharges to tributaries to Outstanding Tribal Resource Waters that would result in lower water quality in the Outstanding Tribal Resource Waters will be allowed. The Tribe intends to allow short-term, temporary degradation in an Outstanding Tribal Resource Water as long as the short-term, temporary degradation is limited to the shortest possible time in the context of weeks to months, does not impact existing uses, and does not alter the essential or special characteristics that make the reservation water an Outstanding Tribal Resource Water.

f) In the event that water quality monitoring identifies water bodies where attainable quality is less than the water quality required under designated uses, these standards may be revised to reflect actual attainability for those water bodies subject to the provisions of the Clean Water Act and consistent with the use attainability analysis described in 40 C.F.R. § 131.10(g), as may be revised from time to time.

### **PART III. NARRATIVE CRITERIA FOR ALL WATERBODIES**

#### **3.1 General Narrative Criteria**

- a) All Tribal Surface Waters shall be free from substances in concentrations or combinations that exceed the criteria for protection of the most sensitive use of the water body or that will prevent attainment of the designated uses specified in Part IV.

In addition, all Tribal Surface Waters shall be free from conditions or activities that may:

**Commented [ME21]:** This paragraph seems to be more relevant to the designated uses section. Please see related edits below.

1. Injure or otherwise adversely affect human health, public safety, public welfare, or any designated uses of the water body; or

2. Injure or otherwise adversely affect the habitation, growth, reproduction, or propagation of indigenous or desirable aquatic plant and animal communities or any individual member of these communities, or of waterfowl accessing the water body; or otherwise adversely affect the physical, chemical, or biological conditions upon which these communities depend;

**Commented [ME22]:** Would the SBT have a desire to support an aquatic community or species that is not indigenous, and could this interfere with indigenous species? The purpose of this term is not clear. Would it be useful to remove "or desirable," or clarify the term with an example?

3. Result in sludge or bottom deposits that adversely affect the physical, chemical, biological, or aesthetic conditions of the water body;

4. Cause physical, chemical, or biological conditions that promote the habitation, growth, or propagation of undesirable, non-indigenous species of plant or animal life in the water body;

**Commented [ME23]:** Similar to previous comment, are there desirable non-indigenous species? Is this term useful? Or use something like, "introduced species that are detrimental to the natural aquatic community"?

5. Cause solids, oils, grease, foam, scum, or other objectionable floating materials or suspended substances in or on the surface of the water body, including in the form of a film or iridescence, or cause a deposit on a shoreline, bank, or aquatic vegetation;

6. Cause objectionable or aesthetically undesirable color in the water body;

7. Cause objectionable odor in, on, or around the water body;

8. Cause objectionable taste in the water body or in any plant, fish or animal, including waterfowl, found in, on, or adjacent to the water body, or impart an unpalatable flavor to fish or other aquatic species;

9. Cause objectionable turbidity, such as that which reduces light transmission to a point where aquatic biota are inhibited, or which causes an unaesthetic visible contrast with the natural appearance of the water;

10. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic species or that threaten or impair designated uses; or

11. Cause deleterious levels of soil particles in the water body from erosion of land involved in earthwork, such as construction of public works, highways, residences, or commercial or industrial developments, or the cultivation and management of agricultural or forested lands.

b) Tribal Surface Waters shall be virtually free of pathogens associated with human sources, such as wastewater management, agriculture, and other anthropogenic activities, at levels that would impair designated and existing uses.

**Commented [ME24]:** "Virtually free" is difficult to quantify or implement. Recommend the indicated edits for specificity.

c) Hazardous materials, toxic substances, nutrients, other oxygen-demanding or other deleterious materials from human causes or algal toxins caused by human activities shall not be present in Tribal Surface Waters in quantities, concentrations, or combinations that impair designated uses; are injurious to humans, animals, plants, or aquatic species; interfere with the normal propagation, growth, reproduction, and survival of indigenous aquatic biota; or that will or are reasonably expected to bioaccumulate in tissues of fish, shellfish, or other aquatic organisms to levels that will threaten or impair the health of aquatic organisms or wildlife or result in undesirable tastes, odors, or unacceptable health risks to humans based on consideration of non-cancer hazards and cancer risks.

**Commented [ME25]:** Edits recommended by Lon

d) Whenever the natural conditions of Tribal Surface Waters are of a lower quality than assigned criteria, the Water Quality Program may develop site-specific or seasonal criteria based on natural conditions~~determine that the natural conditions shall constitute the water quality criteria~~, subject to Commission approval, provided, however, that any such determination shall have a documented, scientifically defensible basis that demonstrates the site-specific criteria protect the applicable designated uses. ~~The Water Quality Program may, at its discretion, determine that a natural condition shall constitute the water quality criteria for one or more seasonal or shorter time periods(s) to reflect variable ambient conditions.~~ Site-specific criteria based on natural conditions shall be subject to public review and comment and EPA approval in accordance with Section 6.4.

**Commented [FE26]:** This has some problematic language that suggests the natural conditions-based criteria will automatically “constitute” the criteria when they are less stringent than the otherwise applicable values. Suggest deleting this provision. In the alternative, we provided some edits to clarify that these situations would result in SSC submitted to EPA.

e) At the boundary between waters of different classifications, the more stringent water quality criteria shall apply. If existing or designated uses of more than one water body are affected, the most restrictive-stringent criteria shall apply.

### 3.2 Temperature

a) Normal, seasonal variations of surface water temperatures that are necessary to support aquatic species shall be maintained. However, within the natural range of climatic conditions, high water temperatures caused by unusually high ambient air temperatures are not violations of these standards.

**Commented [ME27]:** Given climate change and warming trends, temperature standards that make allowance for air temperatures will end up allowing waters to warm as the climate warms. This would not be protective of indigenous cold water species. We recommend adding an allowance only for natural variations in air temperature, rather than a blanket allowance, e.g. per suggested edits.

Paragraph (b) forbids the introduction of heat by other than natural causes, so this reinforces (a) as revised.

b) The introduction of heat by other than natural causes shall not result in conditions injurious to indigenous or desirable plants, animals, or aquatic species. In instances of potential water quality impairments associated with thermal discharge, the requirements of CWA § 316 shall apply.

### 3.3 Minerals

The existing mineral content of Tribal Surface Waters shall not be altered by municipal, industrial, or in-stream activities or other waste discharges so as to interfere with their designated uses.

**Commented [ME28]:** To the extent that the mineral content of Tribal waters has been altered, was this intended to refer to “natural mineral content” rather than “existing mineral content”? Or just, “The mineral content...”

### 3.4 Radioactive Materials

Concentrations of radioactive constituents shall not exceed EPA Safe Drinking Water Act (SDWA) standards except when concentrations caused by naturally occurring materials exceed



those standards, in which case the Water Quality Program may develop site-specific criteria based on natural conditions, subject to Commission approval, provided, however, that any such determination shall have a documented, scientifically defensible basis that demonstrates the site-specific criteria protect the applicable designated uses~~the latter concentrations shall apply. Site-specific criteria based on natural conditions shall be subject to public review and comment and EPA approval in accordance with Section 6.4.~~ Notwithstanding the foregoing sentences, if a standard more stringent than the SDWA standard is indicated for a designated use, the more stringent standard will apply for that designated use.

**Commented [FE29]:** Suggested edits to ensure that this does not read as if the natural condition will supersede the otherwise applicable criteria.

### 3.5 Biological Conditions

- a) All Tribal Surface Waters shall be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.
- b) The goal of the SBT is for all Tribal Surface Waters to be free from substances, whether attributable to point source discharges, nonpoint sources, or in-stream activities, in concentrations or combinations which impair the structure or limit the function of the resident aquatic community as it naturally occurs.
- c) The structure and function of the resident aquatic community shall be measured by biological assessment methods approved by the Water Quality Specialist.
- d) Determination of impairment or limitation of the resident aquatic community shall be based on a comparison with the aquatic community found at an appropriate reference site or region.

### 3.6 Wetland Conditions

- a) All natural wetlands and wetlands created for compensatory mitigation within the Reservation are considered Tribal Surface Waters and are subject to narrative criteria, antidegradation provisions, and applicable site-specific numeric criteria, if any. It is the goal of the SBT to maintain the water quality of wetlands at naturally occurring levels, including natural hydrological conditions (including hydroperiod, hydrodynamics and natural water temperature variations); the native hydrophytic vegetation; and the substrate characteristics necessary to support existing and designated uses, all within the natural range of variation for the individual wetland. For substances that are not naturally occurring, water quality requirements shall be based upon protecting existing uses of the wetland consistent with antidegradation requirements, the narrative water quality criteria in these standards, or appropriate criteria guidance issued by the EPA.

**Commented [ME30]:** Does this addition reflect the intention? A related statement was added to the following paragraph.

- b) Natural wetlands shall not be considered as repositories or treatment systems for wastes from human sources. Wetlands intentionally created from non-wetland sites for the sole purpose of wastewater or stormwater treatment (constructed wetlands) are not considered “surface waters” and therefore are not subject to the provisions of this section. Wetlands intentionally created for the purpose of compensatory mitigation are considered “surface waters” and therefore are subject to the provisions of this section.

**Commented [ME31]:** Would the SBT like to apply the numeric aquatic life criteria wetlands?

c) Point and nonpoint sources of pollution shall not cause destruction or impairment of wetlands except where authorized by the Commission and with approval of the United States Army Corps of Engineers under CWA § 404.

### 3.7 Determining Compliance with Narrative Standards

a) Visual assessment methods, chemical testing, monitoring of physical attributes, and biomonitoring and/or bioassessment following current EPA test methods or other methods approved by the Water Quality Specialist may be used to determine compliance with the narrative criteria in §§ 3.1 through 3.6.

b) When no historical or background data exist, data collection and analysis will be used to determine the standard. Data from an appropriate reference site, which reflects the natural condition, may also be used for this purpose. “Reference site” means a similar site that approximates a natural, unimpacted condition (biological, chemical, physical, etc.) for the target water body.

**Commented [ME32]:** Definition provides additional clarity regarding selection of a reference site.

## PART IV. DESIGNATED USES OF WATERBODIES

**Commented [LS33]:** Suggest relocating this section to be Part II.

### 4.1 Existing Uses

The following sections describe the designated uses for Tribal Surface Waters. Designated uses shall include all existing uses. Narrative water quality criteria and relevant numeric criteria in this section and Appendix 1 shall apply to Tribal Surface Waters. When more than one numeric criterion for a specific parameter applies to a waterbody, the most stringent criterion shall be used.

### 4.2 Human Health Uses

a) Cultural/Ceremonial (CC). Waters appropriate to support or maintain the way of life and traditional activities of the Shoshone-Bannock people. These activities include, but are not limited to, ceremonial practices that may involve contact with water to the point of complete submergence and/or intentional ingestion of the water, use of water in cultural practices, use for instream flow, and protection and preservation of habitat for fish, wildlife, berries, roots, medicines and other vegetation integral to the values of the Shoshone-Bannock people. This use applies to all Tribal Surface Waters. Supplemental Numeric criteria specific to this use are listed in Part V.

**Commented [ME34]:** Per 40 CFR 131.11(b)(2), narrative criteria supplement the numeric criteria. For consistency with 40 CFR, recommend referring to “numeric” criteria here and in the following paragraphs.

b) Recreation (REC). Waters supporting any activities in or on the water where ingestion of small quantities of raw water or consumption of fish and/or aquatic organisms may occur. These activities may include, but are not limited to, swimming, fishing, boating, and wading. Supplemental Numeric criteria specific to this use are listed in Part V.

c) Domestic Water Supply (DWS). Waters that with conventional treatment can be used as a source of drinking water. Supplemental Numeric criteria specific to this use are listed in Part V.

### 4.3 Aquatic Life and Wildlife Uses

a) Wildlife Habitat (WLH). Waters that support birds, mammals, and other non-aquatic organisms that consume surface waters or any of the various forms of aquatic life found in surface waters. Supplemental-Numeric criteria specific to this use are listed in Part V.

b) Coldwater Aquatic Life (CAL). Waters that support the protection and maintenance of a viable aquatic life community ~~for~~ of indigenous cold water species. This use applies to all surface waters of the FHR. Supplemental-Numeric criteria specific to this use are listed in Part V.

c) Salmonid Spawning (SSP). Waters that provide or could provide a habitat for active self-propagating populations of salmonid fishes. Supplemental-Numeric criteria specific to this use are listed in Part V.

#### 4.4 Other Designated Uses

a) Industrial Uses (IND). Waters used for the commercial production, manufacture, or construction of goods or services. All surface waters of the Fort Hall Reservation shall be of sufficient quality to be used for industrial purposes.

b) Agriculture Uses (AGR). Waters used for irrigation purposes, livestock watering, and/or any other farming practices involving the use of water. All surface waters shall be of sufficient quality to support agriculture uses.

c) High-Quality Waters (HQW). Waters where the water quality exceeds the levels necessary to support the designated and existing uses.

d) Outstanding Tribal Resource Waters (OTR). Waters that represent a unique, sacred or cultural resource of the SBT, due for example to their use, their association with the traditional value system of the SBT, or their beauty.

#### 4.5 Table of Waterbody Use Designations

Water Body	CAL	SSP	CC	REC	DWS	AGR	IND	WLH
American Falls Res.	X		X	X	X	X	X	X
Bannock Cr.	X	X	X	X		X	X	X
Barclay Cr.	X		X	X		X	X	X
Beaver Cr.	X		X			X	X	X
Big Jimmy Cr.	X	X	X	X		X	X	X
Birch Cr.	X	X	X	X		X	X	X
Blackfoot River	X	X	X	X		X	X	X

**Commented [ME35]:** Recommend referencing "indigenous species" (or "natural community," or something along those lines) to specify aquatic communities as would be naturally present in the absence of anthropogenic effects. E.g., "Waters that support the protection and maintenance of a natural aquatic life community of indigenous cold water species."

**Commented [ME36]:** 1. These categories would be considered classifications under the antidegradation procedures rather than designated uses. The same criteria apply, but current conditions would need to be protected as specified in the antideg standard and implementation.

2. The antideg section includes a requirement for a public process for waters that are classified as HQW or OTR. If a table is added to the antideg section that assigns a classification to the various water bodies, this requirement could be addressed up front. Otherwise, the HQW and OTR classifications will not be applied to any of the FHR waters at this point, and only the Tier 1 antideg protections apply.

**Commented [ME37]:** For tribe: CWA Section 101(a)(2) requires all waters to be protected for recreation in and on the water, wherever attainable. A few of the listed waters in Table 4.5 are not designated for the REC use. Is the REC use not attainable for these waters?

If the REC use cannot be attained, would the CC use also not include contact in these waters? If the CC use involves contact, it would make sense to apply the recreational criteria (bacteria and cyanotoxins) also to the CC use to protect for contact and incidental ingestion in these waters.

Blind Spring Cr.	X		X			X	X	X
Chesterfield Res.	X		X	X		X	X	X
Clear Cr.	X	X	X	X		X	X	X
Cold Cr.	X	X	X	X		X	X	X
Deadman Cr.	X		X			X	X	X
Deer Cr.	X		X	X		X	X	X
Diggie Cr.	X	X	X	X		X	X	X
Farmer Cr.	X		X	X		X	X	X
Fourth of July Cr.	X	X	X	X		X	X	X
<b><u>Water Body</u></b>	<b><u>CAL</u></b>	<b><u>SSP</u></b>	<b><u>CC</u></b>	<b><u>REC</u></b>	<b><u>DWS</u></b>	<b><u>AGR</u></b>	<b><u>IND</u></b>	<b><u>WLH</u></b>
Garden Cr.	X		X			X	X	X
Gibson Cr.	X		X			X	X	X
Indian Cr.	X		X	X		X	X	X
Jeff Cabin Cr.	X	X	X	X		X	X	X
Jimmy Drinks Cr.	X	X	X	X		X	X	X
Keogh Cr.	X		X	X		X	X	X
Kinney Cr.	X	X	X	X		X	X	X
Lincoln Cr.	X		X	X		X	X	X
Little Toponce Cr.	X	X	X	X		X	X	X
Mareet Cr.	X		X	X		X	X	X
Michaud Cr.	X	X	X	X		X	X	X
Midnight Cr.	X	X	X	X		X	X	X
Mill Cr.	X	X	X	X		X	X	X
Moonshine Cr.	X		X	X		X	X	X
Mud Slough Str.	X	X	X	X		X	X	X
N. Fork Toponce Cr.	X	X	X	X		X	X	X
Porcupine Cr.	X		X	X		X	X	X

Portneuf River	X	X	X	X	X	X	X	X
Rass Cr.	X		X	X		X	X	X
Rattlesnake Cr.	X	X	X	X		X	X	X
Red Rock Cr.	X		X	X		X	X	X
Right Fork	X		X	X		X	X	X
Ross Fork	X	X	X	X		X	X	X
S. Fork Ross Fork	X	X	X	X		X	X	X
Sawmill Cr.	X	X	X	X		X	X	X
Short Cr.	X		X	X		X	X	X
<b><u>Water Body</u></b>	<b><u>CAL</u></b>	<b><u>SSP</u></b>	<b><u>CC</u></b>	<b><u>REC</u></b>	<b><u>DWS</u></b>	<b><u>AGR</u></b>	<b><u>IND</u></b>	<b><u>WLH</u></b>
Snake River	X	X	X	X	X	X	X	X
Spring Cr.	X	X	X	X		X	X	X
Squaw Cr.	X	X	X	X		X	X	X
Starlight Cr.	X	X	X	X		X	X	X
Supon Cr.	X		X	X		X	X	X
Thirty Day Cr.	X	X	X	X		X	X	X
Trail Cr.	X		X	X		X	X	X
Two and a Half Mile Cr.	X		X	X		X	X	X
West Fork Bannock Cr.	X	X	X	X		X	X	X
Wood Cr.	X	X	X	X		X	X	X
All unnamed or unlisted waters of the Fort Hall Reservation.	X		X	X		X	X	X

#### 4.6 Designated Use Category Modifications

Modifications to designated use categories, including the addition or removal of a designated use category or establishment of a use subcategory, may be made pursuant to the provisions of Section 1.5 and consistent with the requirements of 40 C.F.R. § 131.10, as may be revised from time to time.

## PART V. NUMERIC WATER QUALITY CRITERIA FOR VARIOUS USES

### 5.1 General Numeric Criteria

a) Numeric criteria are established in these Surface Water Quality Standards for pollutants ~~or and~~ other parameters, including toxic pollutants and a thermal component (consistent with the requirements of the Clean Water Act), which may adversely affect the water quality of Tribal Surface Waters. The numeric criteria shall support existing uses and the designated uses described in Sections 4.2 – 4.4. In setting numeric criteria, the Water Quality Program may consider the effect of local conditions on water quality and may develop site-specific criteria ~~modify criteria to reflect actual conditions~~ when justified by sufficient data and need. Tables listing numeric water quality criteria for specific pollutants may be found in Appendix 1 of these standards.

**Commented [FE38]:** Recommend deleting this language that suggests site-specific criteria would be based on ambient conditions.

b) When numeric criteria are not available and the Water Quality Program determines ~~it is appropriate~~ they are necessary to protect designated uses, it shall adopt criteria based on biological monitoring or ~~assessment~~ methods consistent with information published pursuant to CWA § 304(a) or other scientifically defensible methods. WQS revisions will be adopted according to procedures in Section 1.5. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numeric criteria, or to limit the ability of the Water Quality Program to adopt other criteria it determines are necessary to protect the designated uses of Tribal Surface Waters.

c) When numeric criteria for the protection of human health are not identified in these standards or Appendix 1, such criteria may be derived by the Water Quality Program from the most recent ~~recommended criteria~~ toxicity information defined in EPA's Integrated Risk Information System (IRIS), EPA guidance and recommendations under CWA Section 304(a), and other scientifically defensible toxicity data. When using EPA-recommended ~~criteria data and procedures~~ to derive surface water quality standards to protect human health, a fish consumption rate of one hundred ~~forty two point four~~ seventy five (175) grams/day, a water ingestion rate of two (2.4) liters/day and a cancer risk level of  $10^{-6}$  shall be utilized.

**Commented [ME39]:** For reference, re development of numeric criteria, here's 40 CFR 131.11:

(b) *Form of criteria:* In establishing criteria, States should:

(1) Establish numerical values based on:

- (i) 304(a) Guidance; or
- (ii) 304(a) Guidance modified to reflect site-specific conditions; or
- (iii) Other scientifically defensible methods;

(2) Establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria.

d) Numeric criteria for the protection of aquatic life uses not identified in these standards or Appendix 1 may be developed by the Water Quality Program from the following information and methods:

1. Site-specific criteria developed pursuant to Section 6.4.

2. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations;

3. The most recent ~~recommended criteria~~ toxicity information defined in EPA's Aquatic Toxicity Information Retrieval Ecotoxicology (ECOTOXACQUIRE) database and other relevant and scientifically defensible toxicity data, and ~~When using EPA-recommended criteria or other scientifically defensible procedures to for derive~~

**Commented [ME40]:** It's not clear how characterizing an effluent would support development of criteria for the receiving water. Biological monitoring or completing a biological survey of a reference water could be a tool used to develop biological criteria for an impacted water. [https://www.epa.gov/sites/production/files/2018-10/documents/national-program-guidance-surface\\_waters.pdf](https://www.epa.gov/sites/production/files/2018-10/documents/national-program-guidance-surface_waters.pdf)

**Commented [ME41]:** Edits to this paragraph update to EPA's current toxicity database and provide additional flexibility as allowed in 40 CFR

water quality criteria ~~to protect aquatic life uses, the lowest observed effect concentration (LOECs) shall be considered~~; or

4. ~~Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment.~~

e) Radioactive materials. Concentrations of radioactive constituents shall not exceed the following:

1. Gross Alpha Particle Activity: 15 pCi/L
2. Gross Beta Particle Activity; 50 pCi/L
3. Tritium: 20,000 pCi/L
4. Strontium 90: 8 pCi/L
5. Radium 226 and 228: 5 pCi/L
6. Uranium: 30 µg/L

f) ~~Total phosphorus. During base flow conditions, Total total phosphorus concentrations shall not exceed 50 µg/L in any stream or river at the point where it enters any lake or reservoir. Natural seasonal fluctuations that are not reasonably attributed to anthropogenic causes should not be considered a violation of this criterion. During other flow conditions, total phosphorus levels shall not exceed the higher of 50 ug/L or naturally occurring levels in surface waters.~~

**Commented [ME42]:** EPA guidance provides for a low toxic effects level for criteria development, which can be a LOEL or NOEL, but can also be a dose-response based toxicity value expressed as a percentile (EC10 or EC20), or another approach. Recommend removing the reference to LOEC as potentially restricting the methods that can be used to derive protective criteria.

**Commented [ME43]:** This appears to refer to monitoring methods rather than methods for developing criteria.

**Commented [ME44]:** It looks like the TP criterion is a combination of a numeric and a narrative natural conditions statement, but presented as an implementation measure. The redlined revisions are intended to apply a combined numeric and narrative that applies during all seasons and is based on earlier discussions of P criteria. Are these revisions consistent with the intent of this paragraph?

## 5.2. Additional Numeric Criteria for Designated Uses

a) Cultural/Ceremonial (CC). Waters designated for these uses shall exhibit the following characteristics:

1. Concentrations of the following substances shall not exceed the following:

<u>Substance</u>	<u>Concentration</u>
Alachlor	0.002 mg/L
Atrazine	0.003 mg/L
Carbofuran	0.005 mg/L
2,4-D	0.07 mg/L
Dinoseb	0.007 mg/L
Diquat	0.02 mg/L
Endothall	0.1 mg/L
Ethylene Dibromide	0.00005 mg/L
Glyphosate	0.7 mg/L
Methoxychlor	0.04 mg/L
Oxamyl (Vydate)	0.2 mg/L
Picloram	0.5 mg/L
Simazine	0.004 mg/L

Total Trihalomethanes 0.08 mg/L

b) Recreation (REC). Waters designated for this use are not to contain *E. coli* bacteria or Enterococci bacteria significant to the public health in concentrations exceeding:

1. A geometric mean of 126 *E. coli* CFUs per 100 ml based on a minimum of five (5) samples taken over a thirty (30)-day period; or  
A geometric mean of 35 Enterococci per 100 ml based on a minimum of five (5) samples taken over a thirty (30)-day period.
2. A Statistical Threshold Value of 410 *E. coli* CFUs per 100 ml, there should not be a greater than ten percent excursion frequency of the selected Statistical Threshold Value magnitude in the same 30 day interval; or  
A Statistical Threshold Value of 130 Enterococci CFUs per 100 ml, there should not be a greater than ten percent excursion frequency of the selected Statistical Threshold Value magnitude in the same 30 day interval.
3. Microcystins and Cylindrospermopsin shall not exceed the criteria found in Table ~~64~~ in Appendix 1.

c) Domestic Water Supply (DWS). Waters designated for this use are to exhibit the following characteristics:

1. Radioactive materials or radioactivity not to exceed concentrations specified in Section 5.1 ~~(+)(c)~~.
2. Small public water supplies (Surface Water).
  - i) Turbidity as measured at the public water intake shall not be:
    - A) Increased by more than 5 NTU above natural conditions, measured at a location upstream from or not influenced by any human-introduced non-point source activity, when background turbidity is 50 NTU or less.
    - B) Increased by more than ten percent (10%) above natural conditions, measured at a location upstream from or not influenced by any human-induced non-point source activity, not to exceed 25 NTU, when background turbidity is greater than 50 NTU.

d) Aquatic Life Communities. The following shall apply to all aquatic life use designations (CAL and SSP) in addition to numeric criteria identified for this use in Appendix 1:

1. Hydrogen Ion Concentration (pH) values within the range of 6.5 to 9.0;

**Commented [ME45]:** The human health criteria for consumption of water plus organisms would apply here, as well. The MCLs provided for the CC use would also apply here.

**Commented [ME46]:** This generic statement or something similar could be added to each paragraph in section 5.2 where Appendix 1 criteria apply to a use, for completeness.



2. The total concentration of dissolved gas not exceeding 110% of saturation at atmospheric pressure at the point of sample collection;
3. Total chlorine residual:
  - i) One-hour average concentration not to exceed 19 µg/l.
  - ii) Four-day average concentration not to exceed 11 µg/l.

**Commented [ME47]:** The criterion would be broadly applicable if this statement were excluded. Is there a benefit to its inclusion? I understand that this is standard language for the criterion, but my concern is that the criterion applies everywhere, not just at the point of sample collection. Perhaps there's a consideration related to sampling or dam operation that I'm not aware of.

e) **Coldwater Aquatic Life (CAL).** Waters designated for this use are to exhibit the following characteristics:

**Commented [ME48]:** Additional comments regarding the DO and temperature criteria may be provided shortly for the CAL and SSP uses, as indicated in the transmittal email for these comments.

1. **Dissolved Oxygen (DO)** concentrations exceeding 6 mg/l at all times. In lakes and reservoirs this standard does not apply to:
  - i) The bottom 20% of water depth in natural lakes and reservoirs where depths are 35 meters or less.
  - ii) The bottom 7 meters of water depth in natural lakes and reservoirs where depths are greater than 35 meters.
  - iii) Those waters of the hypolimnion in stratified lakes and reservoirs.

**Commented [ME49]:** EPA recognizes the challenges of developing criteria for waters that undergo seasonal stratification. However, we recommend that all depths are protected with numeric DO criteria or a natural conditions narrative for DO at all times. An example (Coeur d'Alene Tribe WQS) was provided separately by email on 11/4/2019.

2. Water temperatures of 22 degrees C or less with a maximum daily average of no greater than 19 degrees C.

**Commented [ME50]:** Is this 19 C criterion the 7-day average of the daily maximums?

3. Ammonia. The following criteria are not to be exceeded dependent upon the temperature, T (degrees C), and pH of the water body:

- i) Acute Criterion (Criterion Maximum Concentration (CMC)). The one (1)-hour average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equation:

$$CMC = MIN \left( \left( \frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}} \right), \left( 0.7249 \times \left( \frac{0.0114}{1 + 10^{7.204 - pH}} + \frac{1.6181}{1 + 10^{pH - 7.204}} \right) \times (23.12 \times 10^{0.036 \times (20 - T)}) \right) \right)$$

- ii) Chronic Criterion (Criterion Continuous Concentration (CCC)). The thirty (30)-day rolling average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equation:

$$CCC = 0.8876 \times \left( \frac{0.0278}{1 + 10^{7.688 - pH}} + \frac{1.1994}{1 + 10^{pH - 7.688}} \right) \times (2.126 \times 10^{0.028 \times (20 - MAX(T, 7))})$$

(iii) The highest four (4)-day average within the thirty (30)-day period should not exceed two point five (2.5) times the CCC.

4) Turbidity, below any applicable compliance point, shall not exceed background turbidity by more than 50 NTU instantaneously or more than 25 NTU for more than ten (10) consecutive days.

f) Salmonid Spawning (SSP). Waters designated for this use are to exhibit the following characteristics during the spawning period, and incubation, and larval stages for the particular species inhabiting those waters:

1) Dissolved Oxygen.

i) Intergravel Dissolved Oxygen.

A) One (1)-day minimum of not less than 5.0 mg/l.

B) Seven (7)-day average mean of not less than 6.0 mg/l.

ii) Water Column Dissolved Oxygen (applies after salmonid fry emergence).

A) One (1)-day minimum of not less than 6.0 mg/l or, within the natural range of climatic conditions, 90% of saturation, whichever is greater.

2) Water temperatures of 13 degrees C or less with a maximum daily average no greater than 9 degrees C.

3) Ammonia. Concentration of ammonia is not to exceed the criteria defined in paragraph 5.2(e)(3).

g) Wildlife Habitat (WLH). Criteria for waters designated for this use will generally be satisfied by the water quality criteria set forth in Section 5.1. Should specificity be desirable or necessary to protect a specific use, appropriate criteria will be adopted pursuant to Section 6.4.

h) Industrial Uses (IND). Criteria for waters designated for this use will generally be satisfied by the water quality criteria set forth in Section 5.1. Should specificity be desirable or necessary to protect a specific use, appropriate criteria will be adopted pursuant to Section 6.4.

i) Agriculture Uses (AGR). Criteria for agricultural water supplies will generally be satisfied by the water quality criteria set forth in Section 5.1. Should specificity be desirable or necessary to protect a specific use, "Water Quality Criteria 1972" (Blue Book), Section V, Agricultural Uses of Water, EPA, March 1973, will be used for determining criteria. This document can be obtained from the EPA or the U.S. Government Printing Office appropriate criteria will be adopted pursuant to Section 6.4.

j) High-Quality Waters (HQW). Waters designated for this use are subject to the antidegradation provisions in Part II, the narrative standards in Part III, and other applicable numeric criteria.

**Commented [ME51]:** These life stages represent the in-gravel life stages. The IGDO criteria in 1) would protect these life stages. Emerged fry and juveniles would need to be protected by DO criteria for overlying waters. Change the use to "Salmonid Spawning and Early Life Stages"?

**Commented [ME52]:** 90% saturation is an open-ended criterion and allows degradation resulting from anthropogenic activities, including climate change – see similar comment in Section 3.2. Edit suggested to address this as above.

**Commented [ME53]:** Suggest mirroring the other provisions to keep the Tribe's options open to consider more recent science.

**Commented [ME54]:** It would be clearer to keep HQW and OTR Waters as classifications under the antidegradation regulation and not to consider them designated uses. EPA recommends deleting items j) and k) here.

k) Outstanding Tribal Resource Waters (OTR). Waters designated for this use are subject to the antidegradation provisions in Part II, the narrative standards in Part III, and other applicable numeric criteria.

### 5.3. Application and Construction

a) The criteria assigned and applicable to a surface water body are those required to sustain all designated uses of the water body. When a water body has more than one designated use, as indicated in Table 1, the applicable numeric criteria for each parameter shall be those necessary to maintain all the designated uses of that water body, that is, the most stringent of the criteria established for that body of water shall apply.

b) ~~To ensure that NPDES permits protect the designated uses, they will incorporate the following requirements. The criteria specific to a designated use shall be maintained at all times for narrative criteria and for persistent bioaccumulative toxic pollutants, including those listed in CWA §307(A)(6), and at all times for all other pollutants except when flows are below critical low flow rates. For human health criteria, the critical low flow rate is the harmonic mean flow or, for ephemeral waters, the modified harmonic mean. For aquatic life, the critical low flow for acute criteria is the 1Q10 flow and for chronic criteria is the rate is the 7Q10 flow. For all other criteria, the critical low flow is the 7Q10 flow. The following design flows shall be used to implement the aquatic life and human health criteria in Appendix 1.~~

<u>Criteria</u>	<u>Design Flow</u>
<u>Aquatic Life Acute Criteria (CMC)</u>	<u>1 Q 10 or 1 B 3</u>
<u>Aquatic Life Chronic Criteria (CCC)</u>	<u>7 Q 10 or 4 B 3</u>
<u>Human Health Criteria</u>	<u>Harmonic Mean Flow</u>

#### Notes:

1. CMC (Criteria Maximum Concentration) is the water quality criterion to protect against acute effects in aquatic life and is the highest instream concentration of a priority toxic pollutant consisting of a short term- average not to be exceeded more than once every three years on the average;
2. CCC (Continuous Criteria Concentration) is the water quality criterion to protect against chronic effects in aquatic life and is the highest in stream concentration of a priority toxic pollutant consisting of a 4-day average not to be exceeded more than once every three years on the average;
3. 1 Q 10 is the lowest one-day flow with an average recurrence frequency of once in 10 years determined hydrologically;
4. 1 B 3 is biologically based and indicates an allowable exceedance of once every 3 years. It is determined by EPA's computerized method (DFLOW model);
5. 7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;
6. 4 B 3 is biologically based and indicates an allowable exceedance for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model).

**Commented [ME55]:** The criteria include allowances for frequency of exceedance, e.g., generally once every 3 years for aquatic life criteria. The critical low flow requirements are related to development of mixing zones. It would be clearer to just specify critical low flows to support mixing zone development in permits (if a mixing zone policy is included).

EPA recommends including biologically based critical low flows for flexibility, e.g., if insufficient data are available to determine critical low flows hydrologically. The suggested text is taken from the WQS template at the "Tools for Tribes" webpage.

c) Surface water quality standards established for the attainment and maintenance of upstream designated uses shall be sufficient to protect the attainment and maintenance of downstream designated uses.

d) These standards provide the basis for managing discharges attributable to point and nonpoint sources of pollution, including in-stream activities. These standards are not intended to apply to or control natural conditions or phenomena.

e) These standards are intended to protect the water quality of Tribal Surface Waters in a manner that is at least as protective as would be provided by the laws and regulations of the State of Idaho, and are more stringent in some regards. If any of these standards is less protective of water quality than would be provided by the laws and regulations of the State of Idaho, the standard set by Idaho laws and/or regulations shall apply.

## **PART VI. SAMPLING AND ANALYSIS, VARIANCES AND EXCEEDANCES**

### **6.1 Sampling and Analysis**

a) To the extent feasible, all methods of sample collection, preservation, and analysis used in determining water quality and compliance with these standards shall be in accordance with procedures prescribed by “Guidelines Establishing Test Procedures for the Analysis of Pollutants” (40 C.F.R. Part 136, Appendix A). When a test method is not prescribed by 40 C.F.R. Part 136 for a particular parameter, the most recent edition of “Standard Methods for the Examination of Water and Wastewater” (American Public Health Association, American Waterworks Association, and the Water Pollution Control Federation), and other or superseding methods published and/or approved by the Water Quality Program shall be used.

b) For criteria requiring “no measurable change” (or “no measurable decrease/increase”) from natural background conditions, the approved analytical method with the greatest precision shall be used. A change shall be considered measurable if the concentration measured is statistically different from the background concentration.

c) “Natural conditions” sampling locations shall be upstream or up-gradient from all human-caused sources of pollution. When assessing natural conditions in a disturbed watershed, it may be necessary to use an undisturbed neighboring or similar watershed as a reference condition.

d) The Water Quality Program shall require water quality monitoring to assess the effectiveness of pollution controls and to determine whether these standards are being attained.

### **6.new Mixing Zone Policy**

In conjunction with the issuance of CWA section 402 and 404 permits, the SBT may authorize the use of mixing zones in Tribal Surface Waters on a case-by-case basis, in accordance with the following provisions.

**Commented [FE56]:** Edited to make consistent with the suggested edits to the definition above.

**Commented [ME57]:** Mixing zone language added for SBT considerations

(1) Mixing zones, including their size, configuration, and location, shall be authorized by the Tribal Water Resources Department on a case-by-case basis in accordance with the provisions of this section at the time a permit is issued, renewed, or materially modified and is in effect as long as the permit remains in effect. Such an authorization is required before the permitting authority can use the mixing zone to determine the need for, or level of, effluent limits for a particular pollutant.

Commented [ME58]: Is this the correct entity?

(2) Mixing zones shall not be authorized for a pollutant when the receiving water does not meet water quality criteria for that pollutant, except where (a) the effluent limits established using a mixing zone are consistent with an EPA-approved or EPA-established TMDL, and (b) the mixing zone is in accordance with this section.

(3) Mixing zones shall not be authorized where they may cause unreasonable interference with, or danger to designated uses, including, but not limited to, any of the following:

(i) Impairment to the integrity of the aquatic community, including interference with successful spawning, egg incubation, rearing, or passage of aquatic life.

(ii) Lethality to aquatic life passing through the mixing zone.

(iii) Heat in the discharge that may cause thermal shock, lethality, or loss of cold water habitat or may attract aquatic life to a toxic discharge.

(iv) Bioaccumulative pollutants in the discharge.

(v) Pollutant concentrations that exceed maximum contaminant levels at drinking water intakes.

(vi) Conditions that impede or prohibit recreation in or on the waterbody. Mixing zones shall not be authorized for the indicator bacteria and cyanotoxins identified in Section 5.2(b)).

(4) Mixing zones shall not overlap.

(5) Water quality within an authorized mixing zone is allowed to exceed chronic water quality criteria for those parameters approved by the Tribal Water Resources Department. Acute water quality criteria may be exceeded for such parameters within the zone of initial dilution inside the mixing zone. Acute criteria shall be met as near to the point of discharge as practicably attainable. Narrative criteria in paragraph (c) of this section apply within the mixing zone. Water quality criteria shall not be exceeded outside of the boundary of a mixing zone as a result of the discharge for which the mixing zone was authorized.

Commented [ME59]: Is this the correct entity?

(6) Mixing zones shall be no larger than necessary, and the concentrations of pollutants present shall be minimized. Mixing zones shall meet the following restrictions:

(i) Mixing zones shall be designed to avoid or minimize adverse effects to species and critical habitat listed under the Endangered Species Act.

(ii) Mixing zones in flowing waters shall not:

- (1) Extend in a downstream direction for a distance from the discharge port(s) greater than 300 feet plus the depth of water over the discharge port(s);
- (2) Extend upstream for a distance of over 100 feet;
- (3) Utilize greater than 25% of the critical low flow; nor
- (4) Occupy greater than 25% of the width of the waterbody.
- (iii) Mixing zones in nonflowing waters shall not:
  - (1) Exceed 10% of the volume of the waterbody;
  - (2) Exceed 10% of the surface area of the waterbody (maximum radial extent of the plume regardless of whether it reaches the surface); nor
  - (3) Extend beyond 15% of the width of the waterbody.
- (iv) Mixing zones that result in shore-hugging plumes shall not be authorized.
- (7) The following elements shall be incorporated when designing an outfall:
  - (i) Promote rapid mixing to the extent practicable through careful location and outfall design;
  - (ii) Diffusers shall be used.

## 6.2 Variances

Variances from certain surface water quality standards may be granted by the Water Quality Program, after opportunity for public comment pursuant to WQPA Chapter 6 and with the approval of the Commission, provided they are consistent with the requirements of 40 C.F.R. § 131.14 and approved by EPA in accordance with 40 C.F.R. § 131.5(a)(4).

a) A variance may be adopted for a discharger or water body/waterbody segment(s), but will apply only to the discharger(s) or water body/waterbody segment(s) specified in the variance.

Commented [LS60]: Our language uses permittee(s)

b) When the Water Quality Program and EPA approve a variance, the underlying designated use and criterion shall be retained. All other applicable standards not specifically addressed by the variance remain applicable. A variance, once granted by the Water Quality Program, approved by the Commission and subsequently approved by EPA, shall be the applicable standard in accordance with 40 C.F.R. § 131.21(d) & (e) for the purposes of developing NPDES permit limits and requirements under CWA § 301(b)(1)(C), where appropriate, or when issuing certifications under CWA § 401.

c) If the designated use and criterion addressed by the variance can be achieved by implementing technology-based effluent limits required under CWA §§ 301(b) and 306, no variance shall be allowed

d) A variance must include:

1) Identification of the pollutant(s) or water quality parameter(s) and the water body/waterbody segment(s) to which the variance applies. Discharger-specific variances must also identify the discharger(s) subject to the variance.

2) The variance requirements shall represent the highest attainable condition of the water body or waterbody segment applicable throughout the term of the variance and shall not result in any lowering of the currently attained ambient water quality, unless a variance is necessary for restoration activities, consistent with paragraph (e)(1)(ii) of this section.

i) For discharger-specific variances, the highest attainable condition of the water body or waterbody segment shall be expressed as:

A. The highest attainable interim criterion; or

B. The interim effluent condition that reflects the greatest pollutant reduction achievable; or

C. If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time of adoption of the variance, and the adoption and implementation of a Pollutant Minimization Program.

ii) For variances applicable to a water body or waterbody segment, the highest attainable condition of the water body or waterbody segment shall be expressed as:

A. The highest attainable interim use and interim criterion; or

B. If no additional feasible pollutant control technology can be identified, the interim use and interim criterion that reflect the greatest pollutant reduction achievable with the pollutant control technologies installed at the time of adoption of the variance, and the adoption and implementation of a Pollutant Minimization Program.

3) A statement providing that the requirements of the variance are either the highest attainable condition identified at the time of the adoption of the variance, or the highest attainable condition later identified during any reevaluation, whichever is more stringent.

4) The term of the variance may be an interval of time from the date of EPA approval or a specific date. The term of the WQS variance must only be as long as necessary to achieve the highest attainable condition and shall not exceed five years. One renewal may be granted that shall not exceed 5 years.

**Commented [ME61]:** If the Tribe wishes to limit variances to 5 years per "4" below, then a reevaluation will not be needed and this provision is unnecessary.

**Commented [ME62]:** Choosing to be more stringent than EPA requirements by only allowing variances to last 5 years is consistent with the regs. Is this the Tribes' intent? One or two 5-year extensions could be allowed. Example text added for your consideration.

e) To obtain a variance, the discharger must submit documentation demonstrating the need for a variance, as follows:

1) For a variance to a use specified in CWA § 101(a)(2) or a sub-category of such a use, the discharger must demonstrate that attaining the designated use and criterion is not feasible throughout the term of the WQS variance because either:

i) One of the following factors is met:

A. Naturally occurring pollutant concentrations prevent the attainment of the use.

B. Natural, intermittent, or low flow conditions or water levels prevent attainment of the use.

C. Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

D. Dams, diversions or other types of hydrologic modifications preclude attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in attainment of the use. However, it will be presumed that small diversions and other agricultural modifications can be modified to attain designated uses and that larger hydrological dams are detrimental to native fishes such as Salmonids, and to water quality.

E. Physical conditions related to the natural features of the water body, unrelated to water quality, preclude attainment of the use.

F. Controls more stringent than technology-based effluent limitations would result in substantial and widespread economic and social impact; or

ii) Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.

2) For a variance to a use that is not listed in CWA § 101(a)(2), the discharger must submit justification of how its consideration of the use and value of the water for those uses listed in 40 C.F.R. §131.10(a) appropriately supports the variance and term. A demonstration consistent with paragraph (e)(1)(i) of this section may be used to satisfy this requirement.

3) Documentation demonstrating that the term of the variance is only as long as necessary to achieve the highest attainable condition. Such documentation must justify the term of the variance by describing the pollutant control activities required to achieve



the highest attainable condition, including those activities identified through a Pollutant Minimization Program, which serve as milestones for the variance.

4) For a WQS variance that applies to a water body or waterbody segment, an applicant for a variance must submit:

i) Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or waterbody segment(s) specified in the variance that could be implemented to make progress towards attaining the underlying designated use and criterion.

ii) Any subsequent application for a variance for a water body or waterbody segment, ~~in excess of the original term of the variance or five years,~~ must include documentation of whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the variance and the water quality progress achieved.

**Commented [ME63]:** Suggest deleting "or five years" if Tribe only wishes to allow for 5 year variances.

f) Upon expiration of the ~~5-year time period or permit variance,~~ the discharger must either meet the standard at issue or must re-apply for ~~the a~~ variance in accordance with these rules.

g) In considering a re-application for a variance, the discharger must include documentation of whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the variance and must demonstrate reasonable progress towards meeting the designated use.

(h) A variance serves as the applicable water quality standard for implementing NPDES permitting requirements pursuant to 40 C.F.R. §122.44(d) for the term of the variance. Any limitations and requirements necessary to implement the variance shall be included as enforceable conditions of the NPDES permit for the permittee(s) subject to the WQS variance.

### 6.3 Compliance Schedules

a) Licenses, permits or orders issued by the Commission, Water Quality Program or other permitting agencies for existing discharges or activities may include a schedule for achieving compliance with these surface water quality standards and criteria. The Tribe may authorize the use of compliance schedules, on a case-by-case basis, for water quality-based effluent limits in National Pollutant Discharge Elimination System (NPDES) permits, when appropriate, and consistent with 40 CFR 122.47. Compliance schedules shall be developed to ensure final compliance with all water quality criteria in the shortest practicable time, ~~and shall not exceed five years.~~ Decisions regarding whether to issue compliance schedules will be made on a case-by-case basis by the Water Quality Program and must be approved by the Commission. Compliance schedules may not be issued for new discharges or activities. Compliance schedules may be issued to allow for:

**Commented [ME64]:** Text added for context.

**Commented [ME65]:** Compliance schedules may allow a longer time period than 5 years, and allowing up to 10 or 15 years may be useful to maintain flexibility. However, no specific limit is required, and 5 years is consistent with the CWA and 40 CFR.

1) Construction of necessary treatment capability;

- 2) Implementation of necessary best management practices;
- 3) Implementation of additional best management practices for sources determined not to be meeting water quality criteria following implementation of an initial set of best management practices; and

- 4) Completion of necessary water quality studies.

b) For the period during which compliance with water quality criteria is deferred, interim limitations may be formally established, based on the best professional judgment of the Water Quality Program.

c) Prior to establishing a compliance schedule, the Water Quality Program shall require the permittee to evaluate the possibility of achieving water quality criteria via non-construction changes (e.g., facility operation, pollution prevention).

#### 6.4 Site-Specific Surface Water Quality Criteria

The water quality criteria contained in these standards may not reflect the toxicity of a pollutant in a specific water body. These criteria also represent a limited number of the natural and human-made chemicals that exist in the environment and that may pose a threat to designated or existing uses. Thus, it may be necessary or desirable to develop new water quality criteria or modify existing criteria for a specific water body, through site-specific analyses, which will effectively protect designated and existing uses of that water body. Establishment of site-specific water quality criteria is subject to EPA approval. The Commission, upon the recommendation of the Water Quality Program, shall formally adopt any revised criteria following public review and comment in accordance with Section 1.5. After adoption by the Commission, revised criteria will be submitted to EPA for approval, along with any information that will aid EPA to determine the adequacy of the scientific basis of the revised criteria.

- a) The following are acceptable conditions for developing site-specific criteria:
  - 1) Resident species of the water body are more or less sensitive than those species used to develop a water quality criterion.
    - i) Natural adaptive processes have enabled a viable, balanced aquatic life community to exist in water where natural conditions include levels of a pollutant that exceed the water quality criterion (i.e., resident species have evolved a greater resistance to higher concentrations of a pollutant).
    - ii) The composition of aquatic species in a water body is different from those used to derive a water quality criterion (i.e., more or less sensitive species to a pollutant are present or representative of a water body than have been used to derive a criterion).
  - 2) Biological availability and/or toxicity of a pollutant may be altered due to differences between the physicochemical characteristics of the water in a water body and the laboratory water used in developing a water quality criterion (e.g., alkalinity, hardness,

**Commented [GL66]:** Please note that once a compliance schedule for a specific pollutant ends and the underlying permit limit is in effect, an additional compliance schedule for that pollutant cannot be authorized. May want to consider removing the 5 year limit on compliance schedules. This provision can still be applicable if say the BMPs change in year 3 of a 5 year compliance schedule, but that would require a modification to the permit as a whole (and I don't understand if the secondary compliance schedule gets an additional 5 years or is still under the original 5 years).

**Commented [ME67]:** Revisions provide more complete detail about requirements for adoption and approval of SSC. Also incorporates 2 provisions from end of section 6.4.

pH, salinity, total organic carbon, suspended solids, turbidity, natural complexing, fate and transport water, or temperature).

3) The effect of seasonality on the physicochemical characteristics of a water body and subsequent effects on biological availability and/or toxicity of a pollutant may justify seasonally dependent site-specific criteria.

4) Site specific wWater quality criteria may be derived to protect and maintain existing ambient water quality where existing water quality is better than needed to protect the designated use.

5) Other factors or combinations of factors that upon review of the Water Quality Program may warrant modification of the criteria.

b) The Water Quality Program may develop site-specific criteria by identifying existing data, additional data needs, methods to be used in generating new data, testing procedures to be used, schedules to be followed and quality control and assurance provisions to be used.

c) Site-specific criteria shall not impair designated or existing uses year-round (or seasonally for seasonally dependent criteria). If site-specific criteria are seasonally dependent, the period when the criteria apply shall be clearly identified.

d) Site-specific criteria, if appropriate, shall include both chronic and acute concentrations to more accurately reflect the different tolerances of resident species to the inherent variability between concentrations and toxicological characteristics of a pollutant.

e) Site-specific criteria shall be clearly identified as maximum (not to exceed) or average values. If a criterion represents an average value, the averaging period shall be specified. The conditions, if any, when the criteria apply shall be clearly stated (e.g. specific levels of hardness, pH, water temperature, or bioavailability). Specific sampling requirements (location, frequency, etc.), if any, shall also be specified.

f) A site may be limited to the specific areas affected by a point or non-point source of pollution or, if appropriate, may be an expanded geographical area (e.g., ecoregion, river basin, sub-basin, etc.). For a number of different water bodies to be designated as one site, their respective aquatic communities cannot vary substantially in sensitivity to a pollutant. Site boundaries shall be geographically defined. The Tribes must approve proposed site specific water quality criteria in accordance with Section 1.5.

g) The following are acceptable procedures for developing site-specific criteria for aquatic life protection:

1) Site-specific analyses for the development of new water quality criteria shall be conducted in a manner that is scientifically justifiable and consistent with the assumptions and rationale in "Guidelines for deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses," EPA 1985. This document is available for review and may be obtained from the EPA or the U.S. Government Printing Office.

**Commented [ME68]:** It's unclear how this applies, or what exactly it intends - fate and transport processes may affect the chemical composition of waters, but how is it relevant to a comparison of lab water and a natural water? Suggest deleting this from example list.

**Commented [ME69]:** Does this edit clarify the intent this item?

**Commented [FE70]:** Suggest deleting this – already says above that SSC have to protect designated and existing uses.

**Commented [ME71]:** This statement was moved above because it is generally relevant to SSC development.

**Commented [ME72]:** The document is also available online at <https://www.epa.gov/wqc/guidelines-deriving-numerical-national-water-quality-criteria-protection-aquatic-organisms-and>

2) Site-specific analyses for the modification of existing water quality criteria shall be conducted in accordance with one of the following procedures, as described in the “Water Quality Standards Handbook,” EPA 1983. This document is available for review and may be obtained from the EPA or the U.S. Government Printing Office.

i) Recalculation procedure. This procedure is used to account for differences in sensitivity to a pollutant between resident species and those species used in deriving the criterion. Bioassays in laboratory water may be required for untested resident species.

ii) Indicator Species Procedure. This procedure is used to account for differences in biological availability and/or toxicity of a chemical between the physicochemical characteristics of the water in a water body and the laboratory water used in developing criteria. Bioassays in site water are required using resident species of acceptable nonresident species.

iii) Resident Species Procedure. This procedure is used to account for differences in resident species sensitivity and biological availability and/or toxicity of a pollutant. Bioassays in site water using resident species are required.

iv) Water effects ratios as defined by EPA guidance documents.

v) Other scientifically defensible procedures such as relevant aquatic field studies, laboratory tests, biological translators, fate and distribution models, risk analyses or available scientific literature.

~~h) Deviations from the above described EPA procedures shall have justifications that are adequately documented and based on sound scientific rationale.~~

i) The data, testing procedures and application factors used to develop site-specific criteria shall reflect the nature of the pollutant (e.g., persistency, bioaccumulation potential, avoidance or attraction responses in fish, etc.), the designated and existing designated uses, and the most sensitive resident species of the water body.

~~j) The Commission, upon the recommendation of the Water Quality Program, shall formally adopt any revised criteria following public review and comment.~~

~~k) After adoption by the Commission, revised criteria will be submitted to EPA for approval, along with any information that will aid EPA to determine the adequacy of the scientific basis of the revised criteria.~~

## 6.5 Short-Term ~~Exceedenees~~Exceedances

a) The criteria and special conditions established in these standards may be ~~modified~~ ~~exceeded~~ for a specific water body on a short-term basis when necessary to accommodate essential activities, respond to emergencies, or otherwise protect the public health and welfare, even if such activities may result in a temporary reduction of water quality conditions below the criteria and classifications established in these standards.

**Commented [ME73]:** This document has been updated and is available online at <https://www.epa.gov/wqs-tech/water-quality-standards-handbook>. It is no longer available in hardcopy, but the various chapters are periodically updated online. The current date is 2017. Here's the reference relevant to SSC:

U.S. Environmental Protection Agency (EPA). 2017. *Water Quality Standards Handbook: Chapter 3: Water Quality Criteria*. EPA-823-B-17-001. EPA Office of Water, Office of Science and Technology, Washington, DC. Accessed November 2018.

<https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter3.pdf>

**Commented [LS74]:** Redundant

**Commented [FE75]:** Moved up to top of section.

**Commented [ME76]:** Provisions that allow WQS exceedances or revise the WQS on a temporary basis without a full rulemaking process are not consistent with the CWA, so EPA no longer supports this language and recommends deleting this section. Variances would apply to situations where the criteria could not be met on a temporary basis.

**Commented [ME77]:** Modification of criteria would require a rulemaking and EPA approval

b) Approval of such an ~~exceedence~~exceedance shall be issued in writing by the Water Quality Specialist, with the approval of the Commission, subject to such terms and conditions as prescribed, provided that:

1) Such an ~~exceedence~~exceedance shall not exceed a seven-day period.

2) In cases where a short-term ~~exceedence~~exceedance results in quantifiable losses to existing aquatic resources or other water uses, the responsible party or parties shall compensate for these losses through mitigation activities to be determined by the Water Quality Specialist.

3) In no case will any degradation of water quality be allowed if this degradation significantly interferes with or becomes injurious to existing water uses, including cultural and spiritual uses, or causes long-term harm to the environment or cultural resources. No short-term ~~exceedence~~exceedance authorization may be issued where it could adversely impact threatened or endangered species or their critical habitat.

4) A request for a short-term ~~exceedence~~exceedance shall be made, in writing, to the Water Quality Specialist. Such a request shall be made at least thirty (30) days prior to the start of the activity impairing water quality, unless the ~~exceedence~~exceedance is in response to an emergency requiring immediate attention, in which case notification shall be provided within twenty-four (24) hours of the response decision.

## Appendix 1

### Numeric Criteria for Toxic Substances

#### 1.1 Documents Incorporated by Reference

For the purposes of NPDES permitting, discharge licenses issued pursuant to Water Resources Code § 4.C.1.b, interpretation and implementation of metals criteria listed in Table 1 of this Appendix should be governed by the following standards that are hereby incorporated by reference, in addition to the provisions of 40 C.F.R. § 131.36; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Table 2 of this Appendix.

a) “Guidance Document on Dissolved Criteria—Expression of Aquatic Life Criteria,” EPA, October 1993.

b) “Guidance Document on Dynamic Modeling and Translators,” EPA, August 1993.

c) “Guidance Document on Clean Analytical Techniques and Monitoring,” EPA, October 1993.

d) “Interim Guidance on Determination and Use of Water-Effect Ratios for Metals,” EPA, February 1994.

#### 1.2 Applicability

Toxic substance criteria in Table 1 through Table 4, below, apply to Tribal Surface Waters as follows:

a) Table 1, 1a, 1b, and 2 apply to waters designated for Coldwater Aquatic Life and Salmonid Spawning designated uses.

b) Table 3 Column A applies to Domestic Water Supply and Cultural Ceremonial designated uses, Table 3 Column B applies to waters designated for Recreation uses.

c) Table 4 applies to waters designated for Recreation uses.

**Commented [ME78]:** Documents that are mandated in standards can provide important requirements, but they can also limit options as knowledge and guidance evolve. Recommend including references as examples and making a general statement about using current EPA guidance and requirements for implementing the WQS.

**Commented [ME79]:** 40 C.F.R. § 131.36 is the National Toxics Rule. What is the intent in citing this? Add detail or delete?

**Commented [ME80]:** There are more recent methods for sampling for metals (the “clean hands dirty hands” method, EPA method 1669)

**Commented [ME81]:** EPA generally recommends applying HHC for consumption of organisms only to all waters where fish or other organisms are present that could be harvested for consumption. Are all such waters included in the recreational use designations? Or alternatively, Table 3 Column B could be applied more broadly to all waters. Please see related comment above about application of the recreational use under CWA section 101(a)(2).

**Commented [ME82]:** Would the cyanotoxin criteria also apply to the CC use?

Table 1

Table 1. Aquatic Life Criteria			
<b>A</b>		<b>B</b>	
Compound	CAS Number	Freshwater	
		Criterion Maximum Concentration (CMC) (µg/L) B1	Criterion Continuous Concentration (CCC) (µg/L) B2
Acrolein	107028	3	3
Aldrin <sup>A</sup>	309002	3	-
alpha-Endosulfan <sup>A,B</sup>	959988	0.22	0.056
Ammonia	7664417	See Table 4	
Arsenic <sup>D,E</sup>	7440382	340	150
beta-Endosulfan <sup>A,B</sup>	33213659	0.22	0.056
Cadmium <sup>E</sup>	7440439	See Table 1b	
Carbaryl	63252	2.1	2.1
Chlordane <sup>A</sup>	57749	2.4	0.0043
Chloride	16887006	860000	230000
Chlorine	7782505	19	11
Chlorpyrifos	2921882	0.083	0.041
Chromium (III) <sup>E</sup>	16065831	See Table 1b	
Chromium (VI) <sup>E</sup>	18540299	16	11
Copper <sup>E,L</sup>	7440508	See footnote L.	
Cyanide <sup>F</sup>	57125	22	5.2
Demeton	8065483	-	0.1
Diazinon	333415	0.17	0.17
Dieldrin	60571	0.24	0.056 <sup>a</sup>
Endrin	72208	0.086	0.036 <sup>g</sup>
gamma-BHC (Lindane)	58899	0.95	-
Guthion	86500	-	0.01
Heptachlor <sup>A</sup>	76448	0.52	0.0038
Heptachlor Epoxide <sup>A,H</sup>	1024573	0.52	0.0038
Iron	7439896	-	1000
Lead <sup>E</sup>	7439921	See Table 1b	
Malathion	121755	-	0.1
Mercury <sup>E,I</sup>	7439976	1.4	0.012
Methoxychlor	72435	-	0.03
Mirex	2385855	-	0.001
Nickel <sup>E</sup>	7440020	See Table 1b	

**Commented [FE83]:** Is this the right cite? Should it be Section 5.2(e)(3)?

**Commented [ME84]:** Based on the biological opinion provided by the Services for Idaho, the mercury criterion of 0.012 ug/L is not likely to be protective of all fish and invertebrate species. Options here are to move forward with the criterion of 0.012 ug/L, although it may be disapproved; not adopt a criterion until a protective value is identified for Idaho and rely on the toxics narrative for Hg (the HHC will also apply to waters); use the Idaho biops to evaluate toxicity studies and bioaccumulation data specific to reservation waters to possibly identify a mercury level that would be protective of sensitive species in reservation waters; or another method. The Idaho biops indicate that a concentration in fish tissue of 0.3 mg/kg (translated to a water column concentration of 0.002 ug/L based on bioaccumulation data for Idaho waters) would likely be protective; use of these values could be explored for protection of the aquatic life use in reservation waters in the interim until a protective value is identified for Idaho.

Table 1. Aquatic Life Criteria			
A		B	
Compound	CAS Number	Freshwater	
		Criterion Maximum Concentration (CMC) (µg/L) B1	Criterion Continuous Concentration (CCC) (µg/L) B2
Nonylphenol	84852153	28	6.6
Parathion	56382	0.065	0.013
Pentachlorophenol	87865	19 <sup>k</sup>	15 <sup>k</sup>
Polychlorinated biphenyls, total	—	—	0.014 <sup>h</sup>
Selenium	7782492	See Table 2	
Silver <sup>A,E</sup>	7440224	See Table 1b	
Sulfide-Hydrogen Sulfide	7783064	-	2
Toxaphene	8001352	0.73	0.0002
Tributyltin (TBT)	—	0.46	0.072
Zinc <sup>E</sup>	7440666	See Table 1b	
4,4'-DDT <sup>A</sup>	50293	1.1	0.001

**Footnotes to Table 1:**

- A. These criteria are based on the [1980 criteria](#), which used different Minimum Data Requirements and derivation procedures from the [1985 Guidelines](#). If evaluation is to be done using an averaging period, the acute criteria values given are not to be exceeded and should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.
- B. This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.
- C. Freshwater criteria for aluminum is reserved for new values under development. Criteria will be added once available.
- D. This recommended water quality criterion was derived from data for arsenic (III), but is applied here to total arsenic.
- E. Freshwater and saltwater criteria for metals are expressed in terms of the dissolved metal in the water column. See [Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria](#). See Table 1a for conversion factors.
- F. These recommended water quality criteria are expressed as µg free cyanide (CN/L).
- G. The derivation of the CCC for this pollutant did not consider exposure through the diet, which is probably important for aquatic life occupying upper trophic levels.
- H. This value was derived from data for heptachlor and there was insufficient data to determine relative toxicities of heptachlor and heptachlor epoxide.
- I. This recommended water quality criterion was derived from data for inorganic mercury (II), but is applied here to total dissolved mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criterion was derived.
- J. For fresh waters, see [Quality Criteria for Water, 1986 \("Gold Book"\)](#). For marine waters, see [Ambient Aquatic Life Water Quality Criteria for Dissolved Oxygen \(Saltwater\): Cape Cod to Cape Hatteras \(EPA-822-R-00-012\)](#).
- K. Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH and values displayed in table correspond to a pH of 7.8.  $CCC = e^{1.005(pH) - 5.134}$ ,  $CMC = e^{1.005(pH) - 4.869}$

**Commented [ME85]:** An ALC for PCBs should be adopted per 40 CFR, given their ubiquitous presence in the environment. This is the current 304a criterion and applies to total PCBs. A footnote could be added that states (as for the HHC criteria):  
This criterion applies to total PCBs, (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses.)



Table 1. Aquatic Life Criteria			
A		B	
Compound	CAS Number	Freshwater	
		Criterion Maximum Concentration (CMC) (µg/L) B1	Criterion Continuous Concentration (CCC) (µg/L) B2
<sup>L</sup> Freshwater copper criteria shall be developed using EPA’s current Biotic Ligand Model (BLM current criteria document: EPA-822-R-07-001). When criteria are developed such criteria must be protective of aquatic life for all expected water quality conditions. A minimum number of 24X samples over two years, reflecting intra-annual or seasonal flow and spatial variability related water quality variability must be collected. If inter-annual or spatial variability in water quality occurs regularly, the monitoring plan shall reflect these characteristics. In the absence of sufficient ambient data for any of the BLM input parameters, default values corresponding to the 10th percentile of the applicable ecoregional dataset for the relevant stream order for each missing parameter shall be used. <u>Default values shall be found in EPA’s Missing Parameters Technical Support Document (EPA 820-R-15-106), hereby incorporated by reference. All BLM criteria shall be made available on the Tribe’s website.</u>			

**Commented [ME86]:** The EPA recently rescinded all draft guidance that has not been finalized over some time period. This "missing parameters document" is among the rescinded documents. The underlying dataset could be cited instead, or the relevant tables could be added to the WQS (this might be the most direct approach, but would take a little time). Let me know how you would like to proceed and I'll see about providing assistance.

**Table 1a: Conversion Factors for Dissolved Metals**

Metal	Freshwater CMC	Freshwater CCC
Arsenic	1.000	1.000
Cadmium	$1.136672 - [(\ln \text{ hardness})(0.041838)]$	$1.101672 - [(\ln \text{ hardness})(0.041838)]$
Chromium III	0.316	0.860
Chromium VI	0.982	0.962
Copper	0.960	0.960
Lead	$1.46203 - [(\ln \text{ hardness})(0.145712)]$	$1.46203 - [(\ln \text{ hardness})(0.145712)]$
Mercury	0.85	0.85
Nickel	0.998	0.997
Silver	0.85	—
Zinc	0.978	0.986

**Table 1b: Parameters for Calculating Dissolved Metals Criteria That Are Hardness-Dependent**

Chemical	mA	bA	mC	bC	Conversion Factors (CF)	
					CMC	CCC
Cadmium	0.9789	-3.866	0.7977	-3.909	$1.136672 - [(\ln(\text{hardness}))(0.041838)]$	$1.101672 - [(\ln(\text{hardness}))(0.041838)]$
Chromium III	0.8190	3.7256	0.8190	0.6848	0.316	0.860
Lead	1.273	-1.460	1.273	-4.705	$1.46203 - [(\ln(\text{hardness}))(0.145712)]$	$1.46203 - [(\ln(\text{hardness}))(0.145712)]$
Nickel	0.8460	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.59	—	—	0.85	—
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Hardness-dependent metals criteria may be calculated from the following:

$$\text{CMC (dissolved)} = \exp \{ \text{mA} [\ln(\text{hardness})] + \text{bA} \} \text{ (CF)}$$

$$\text{CCC (dissolved)} = \exp \{ \text{mC} [\ln(\text{hardness})] + \text{bC} \} \text{ (CF)}$$

**Table 2. Selenium Aquatic Life Criteria<sup>a</sup>**

Criterion Element	Magnitude	Duration	Frequency
Fish Tissue <sup>a</sup> (Egg-Ovary) <sup>b</sup>	15.1 mg/kg dw	Instantaneous measurement <sup>c</sup>	Not to be exceeded
Fish Tissue <sup>a,g</sup> (Whole Body) <sup>d</sup>	8.5 mg/kg dw	Instantaneous measurement <sup>c</sup>	Not to be exceeded
Fish Tissue <sup>a,g</sup> (Muscle-skinless, boneless filet) <sup>d</sup>	11.3 mg/kg dw <b>muscle</b>	Instantaneous measurement <sup>c</sup>	Not to be exceeded
Water Column <sup>e</sup> (Monthly Average Exposure)	1.5 µg/L in lentic aquatic systems 3.1 µg/L in lotic aquatic systems	30 days	Not more than once in three years on average
Water Column <sup>e</sup> (Intermittent Exposure) <sup>f</sup>	$\text{WQC}_{\text{int}} = \frac{\text{WQC}_{30\text{-day}} - C_{\text{bkgrnd}}(1 - f_{\text{int}})}{f_{\text{int}}}$	Number of days/month with an elevated concentration	Not more than once in three years on average

<sup>a</sup> Fish tissue elements are expressed as steady-state.

<sup>b</sup> Egg/ovary supersedes any whole-body, muscle, or water column element when fish egg/ovary concentrations are measured.

<sup>c</sup> Fish tissue data provide **instantaneous** point measurements that reflect integrative accumulation of selenium over time and space in fish population(s) at a given site.

<sup>d</sup> Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured.

<sup>e</sup> Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data.

<sup>f</sup> Where  $\text{WQC}_{30\text{-day}}$  is the water column monthly element, for either a lentic or lotic waters;  $C_{\text{bkgrnd}}$  is the average background selenium concentration, and  $f_{\text{int}}$  is the fraction of any 30-day period during which elevated selenium concentrations occur, with  $f_{\text{int}}$  assigned a value  $\geq 0.033$  (corresponding to 1 day).

Criterion Element	Magnitude	Duration	Frequency
*This tissue value may not be protective of human health <del>criteria</del> . If values <del>of</del> greater than 7.61 mg/kg dw are encountered <u>in fish muscle tissue or whole body samples</u> , further investigation is necessary to <u>ensure evaluate</u> protection of human health designated uses.			

**Table 3. Human Health Criteria**

Human Health Criteria based on a Fish Consumption Rate of 175 grams/day and Cancer Risk Level of 1 in 1,000,000 people (10 <sup>-6</sup> )			
Pollutant	CAS Number	Water + Organism (µg/L) A	Organism Only (µg/L) B
1,1,1-Trichloroethane <sup>a</sup>	71556	8000	20000
1,1,2,2-Tetrachloroethane	79345	0.1	0.3
1,1,2-Trichloroethane <sup>a</sup>	79005	0.38	1.1
1,1-Dichloroethylene <sup>a</sup>	75354	300	2000
1,2,4,5-Tetrachlorobenzene	95943	0.004	0.004
1,2,4-Trichlorobenzene <sup>a</sup>	120821	0.0092	0.0092
1,2-Dichlorobenzene <sup>a</sup>	95501	300	400
1,2-Dichloroethane <sup>a</sup>	107062	9	79
1,2-Dichloropropane	78875	0.74	3.8
1,2-Diphenylhydrazine	122667	0.02	0.03
1,2-Trans-Dichloroethylene <sup>a</sup>	156605	100	500
1,3-Dichlorobenzene	541731	2	2
1,3-Dichloropropene	542756	0.23	1.4
1,4-Dichlorobenzene <sup>a</sup>	106467	90	100
2,3,7,8-TCDD (Dioxin) <sup>c</sup>	1746016	5.9E-10	5.8E-10
2,4,5-Trichlorophenol <sup>b</sup>	95954	60	70
2,4,6-Trichlorophenol <sup>b</sup>	88062	0.31	0.34
2,4-Dichlorophenol <sup>b</sup>	120832	5	7
2,4-Dimethylphenol <sup>b</sup>	105679	90	300

**Commented [ME87]:** It might be useful to include a brief explanation here about the source of this value, maybe along these lines: "The value 7.6 mg/kg dw was derived from the HHC for consumption of organisms only, taking into account the bioaccumulation factor and converting from a wet weight to a dry weight basis." Another approach would be to include an explanation with any support materials for the public notice. Note that this is an implementation statement that is not subject to EPA CWA action.

I would suggest rounding the action value to at most to two figures (7.6 mg/kg dw).

**Commented [ME88]:** Lon provided the following comment re a table of HHC toxicity and other input values. Please see the transmittal email for these comments; EPA will compile this unless you already have something prepared.

Lon's comment:

Recommend that a specific reference be cited that identifies chemical specific inputs for each chemical's criteria (RfD, CSF, BAF, BCF, RSC) such as:  
[https://www.epa.gov/sites/production/files/2016-03/documents/summary\\_of\\_inputs\\_final\\_revised\\_3.24.16.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/summary_of_inputs_final_revised_3.24.16.pdf).

An additional table should be provided that lists inputs for chemicals not included in that citation, or that utilize inputs that differ from those found in the citation such as TCDD, arsenic, nickel, selenium, thallium, and zinc.

It is also not clear as to how bioaccumulation is being treated. Are trophic level specific BAFs being used with trophic level specific FCRs? Is a single BAF being used with a FCR of 175 g/day? If the latter, what are the relevant BAFs?

**Commented [KL89]:** It is not clear as to what RfD, CSF, BAF(s), and RSC were used to derive these values.

2,4-Dinitrophenol	51285	10	40
2,4-Dinitrotoluene	121142	0.04	0.2
2-Chloronaphthalene	91587	100	100
2-Chlorophenol <sup>b</sup>	95578	20	100
2-Methyl-4,6-Dinitrophenol	534521	1	3
3,3'-Dichlorobenzidine	91941	0.014	0.018
3-Methyl-4-Chlorophenol <sup>b</sup>	59507	200	300
4,4'-DDD	72548	0.000015	0.000015
4,4'-DDE	72559	0.0000021	0.0000021
4,4'-DDT	50293	0.000004	0.000004
Acenaphthene <sup>b</sup>	83329	10	10
Acrolein	107028	3	50
Acrylonitrile	107131	0.058	0.85
Aldrin	309002	9.4e-8	9.4e-8
alpha-BHC	319846	0.000047	0.000047
alpha-Endosulfan	959988	3	3
Anthracene	120127	40	40
Antimony <sup>a,c,d</sup>	7440360	5	73
Asbestos <sup>a,c,e</sup>	1332214	7 million fibers/L	--
Arsenic <sup>c</sup>	7440382	0.0069	0.0053
Barium <sup>a,c,e,f</sup>	7440393	1000	--
Benzene <sup>a</sup>	71432	0.46	1.9
Benzidine	92875	0.00013	0.0013
Benzo(a) Anthracene	56553	0.00016	0.00016
Benzo(a) Pyrene <sup>a</sup>	50328	0.000016	0.000016
Benzo(b) Fluoranthene	205992	0.00016	0.00016
Benzo(k) Fluoranthene	207089	0.0016	0.0016
beta-BHC (beta-HCH)	319857	0.0016	0.0017

**Commented [ME90]:** The arsenic criteria should be checked – the criterion in column A is higher than B, but would be expected to be lower, and the values are higher than the WA values (0.0045 and 0.0059).

beta-Endosulfan	33213659	5	5
Bis(2-Chloro-1-Methylethyl) Ether	108601	200	400
Bis(2-Chloroethyl) Ether	111444	0.027	0.27
Bis(2-Ethylhexyl) Phthalate <sup>a</sup>	117817	0.045	0.046
Bis(Chlormethyl) Ether	542881	0.00014	0.0021
Bromoform <sup>a</sup>	75252	4.9	14
Butylbenzyl Phthalate	85687	0.01	0.01
Carbon Tetrachloride <sup>a</sup>	56235	0.3	0.6
Chlordane <sup>a</sup>	57749	0.000038	0.000038
Chlorobenzene <sup>a,b</sup>	108907	60	100
Chlorodibromomethane <sup>a</sup>	124481	0.63	2.5
Chloroform <sup>a</sup>	67663	50	300
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex] <sup>a</sup>	93721	40	50
Chlorophenoxy Herbicide (2,4-D) <sup>a</sup>	94757	720	1500
Chrysene <sup>a</sup>	218019	0.016	0.016
Copper <sup>a,b,c,e</sup>	7440508	1300	--
Cyanide <sup>a</sup>	57125	4	50
Di-n-Butyl Phthalate	84742	3	3
Dibenzo(a,h) Anthracene	53703	0.000016	0.000016
Dichlorobromomethane <sup>a</sup>	75274	0.75	3.3
Dieldrin	60571	1.5e-7	1.5e-7
Diethyl Phthalate	84662	80	80
Dimethyl Phthalate	131113	200	200
Dinitrophenols	25550587	10	100
Endosulfan Sulfate	1031078	4	5
Endrin	72208	0.004	0.004
Endrin Aldehyde <sup>a</sup>	7421934	0.1	0.1
Ethylbenzene <sup>a</sup>	100414	14	15

Fluoranthene	206440	2	2
Fluorene	86737	8	8
Gamma-BHC (HCH); Lindane <sup>a</sup>	58899	0.53	0.54
Heptachlor <sup>a</sup>	76448	7.1e-7	7.1e-7
Heptachlor Epoxide <sup>a</sup>	1024573	0.0000039	0.0000039
Hexachlorobenzene <sup>a</sup>	118741	0.0000096	0.0000096
Hexachlorobutadiene <sup>a</sup>	87683	0.001	0.001
Hexachlorocyclohexane (HCH) - Technical	608731	0.0012	0.0012
Hexachlorocyclopentadiene <sup>a,b</sup>	77474	0.5	0.5
Hexachloroethane	67721	0.02	0.02
Indeno(1,2,3-cd) Pyrene	193395	0.00016	0.00016
Isophorone	78591	30	220
Manganese <sup>b,c,e,g</sup>	7439965	50	100
Methoxychlor <sup>a</sup>	72435	0.002	0.002
Methyl Bromide	74839	100	1000
Methylene Chloride <sup>a</sup>	75092	20	200
Methylmercury <sup>c,h</sup>	22967926	N/A	0.03 mg/kg
N-Nitrosodi-n-Propylamine <sup>c</sup>	621647	0.0044	0.058
N-Nitrosodimethylamine <sup>c</sup>	62759	0.00065	0.34
N-Nitrosodiphenylamine <sup>c</sup>	86306	0.62	0.69
Nickel <sup>c,d</sup>	7440020	39	30
Nitrates <sup>a,c,c</sup>	14797558	10000	--
Nitrobenzene <sup>b</sup>	98953	10	70
Nitrosamines <sup>c</sup>	--	0.000756	0.0526
Nitrosodibutylamine <sup>c</sup>	924163	0.0049	0.025
Nitrosodiethylamine <sup>c</sup>	55185	0.000756	0.0526
Nitrosopyrrolidine <sup>c</sup>	930552	0.016	3.9
Pentachlorobenzene	608935	0.01	0.01

**Commented [ME91]:** The HHC for consumption of water plus organisms (column A) are applied to the CC use. No methylmercury criterion is provided in column A, so the CC use is not protected with a methylmercury criterion. Does the CC use include harvesting and consuming fish? If so, the HHC for methylmercury (column B) should be applied to these waters, in addition to the HHC in column A. Methylmercury is the only chemical that only has a criterion in column B.

**Commented [KL92]:** It is not clear how this criterion was derived. Specific input values noted in the footnote need to be provided.

Pentachlorophenol (PCP) <sup>a,b</sup>	87865	0.004	0.004
Phenol <sup>b</sup>	108952	4000	30000
Polychlorinated Biphenyls (PCBs) <sup>a,c,i</sup>	1336363	0.0000073	0.0000073
Pyrene	129000	3	3
Selenium <sup>a,c</sup>	7782492	25	95
Solids Dissolved and Salinity <sup>c,e</sup>	--	250000	--
Tetrachloroethylene <sup>a</sup>	127184	2.9	3.5
Thallium <sup>c</sup>	74440280	0.054	0.048
Toluene <sup>a</sup>	108883	32	63
Toxaphene <sup>a</sup>	8001352	0.000087	0.000087
Trichloroethylene <sup>a</sup>	79016	0.4	0.8
Vinyl Chloride <sup>a</sup>	75014	0.02	0.2
Zinc <sup>b,c</sup>	7440666	584	452

- EPA has issued a Maximum Contaminant Level (MCL) for this chemical which may be more stringent. See [EPA's National Primary Drinking Water Regulations](#).
- The criterion for organoleptic (taste and odor) effects may be more stringent. See [National Recommended Water Quality Criteria - Organoleptic Effects](#).
- EPA's [National Recommended Human Health Water Quality Criteria](#) for this pollutant were not updated in 2015. However, this table's criteria values are calculated using the 2015 revised inputs for body weight, drinking water intake rate, and fish consumption rate (see [2015 EPA Updated Ambient Water Quality Criteria for the Protection of Human Health](#)), unless otherwise noted.
- This criterion was revised to reflect EPA's q1\* or RfD as contained in the [Integrated Risk Information System \(IRIS\)](#) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) is from the 1980 Ambient Water Quality Criteria document.
- Criteria for these pollutants are from the [National Recommended Water Quality Criteria - Human Health Criteria Table](#). They are not calculated based on this table's inputs for fish consumption rate and cancer risk level.
- This human health criterion is the same as originally published in the [Quality Criteria for Water, 1976 \("Red Book"\)](#) which predates the 1980 methodology and did not utilize the fish ingestion BCF approach. This same criterion value is published in the [Quality Criteria for Water, 1986 \("Gold Book"\)](#).
- The Human Health for the consumption of Water + Organism criterion for manganese is not based on toxic effects, but rather is intended to minimize objectionable qualities such as laundry stains and objectionable tastes in beverages.
- This fish tissue residue criterion for methylmercury is based on the total fish consumption rate.

**Commented [KL93]:** It is not clear how this criterion was derived. Values for the RfD, RSC, and BAFs need to be provided.

**Commented [KL94]:** It is not clear how this criterion was derived. Values for the RfD, RSC, and BAFs need to be provided.

**Commented [KL95]:** It is not clear how this criterion was derived. Values for the RfD, RSC, and BAFs need to be provided.

**Commented [ME96]:** Should this say using the 2015 revised inputs for body weight and drinking water intake rate, and the Tribe's input for fish consumption rate?

**Commented [KL97]:** Please provide the specific values associated with these parameters.

**Commented [ME98]:** This statement is not clear. Isn't the methylmercury value based on the FCR of 175? Were any trophic level-specific FCRs or BAFs used?

- i. This criterion applies to total PCBs (*e.g.*, the sum of all congener or all isomer or homolog or Aroclor analyses).

Table <del>64</del> . Cyanotoxins	Microcystins			Cylindrospermopsin		
	Magnitude (µg/L)	Frequency	Duration	Magnitude (µg/L)	Frequency	Duration
Recreational Water Quality Criteria	4	No more than 10 percent of days	Recreational Season (one calendar Year)	8	No more than 10 percent of days	Recreational Season (one calendar Year)